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RECORDATION NO. 21842 FILED

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RECORDATION NO. 21842-A-B FILED

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RECEIVED
SURFACE TRANSPORTATION
BOARD

December 8, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are three (3) copies of a Railcar Lease Agreement, dated as of December 8, 1998, a primary document as defined in the Board's Rules for the Recordation of Documents and three (3) copies of the following documents related thereto: a Trust Indenture and Lease Supplement dated December 8, 1998.

The names and addresses of the parties to the enclosed documents are:

Railcar Lease Agreement
and Lease Supplement

Primary

Lessor: GE Capital Railcar Services Canada Company
421 7th Avenue S.W., Suite 2401
Calgary, Alberta T2P 4K0

Lessee: NOVA Chemicals Ltd.
645 - 7th Avenue S.W., 23rd Floor
Calgary, Alberta T2P 4G8

Mr. Vernon A. Williams
December 8, 1998
Page 2

Trust Indenture

Issuer: GE Capital Railcar Services Canada Company
421 7th Avenue S.W., Suite 2401
Calgary, Alberta T2P 4K0

Indenture Trustee: Montreal Trust Company of Canada
151 Front Street West, Suite 605
Toronto, Ontario M5J 2N1

A description of the railroad equipment covered by the enclosed documents is:

300 railcars bearing reporting marks and road numbers
NCLX 1 through NCLX 300

Also enclosed is a check in the amount of \$78.00 payable to the order of the
Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg
Enclosures

RECORDATION NO. 21842 FILED
DEC 8 '98 4-25 PM

GE CAPITAL RAILCAR SERVICES CANADA COMPANY

as Lessor

and

NOVA CHEMICALS LTD.

as Lessee

DATED December 8, 1998

RAILCAR LEASE AGREEMENT

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RAILCAR LEASE AGREEMENT

THIS Lease is made the 8th day of December, 1998

B E T W E E N:

GE CAPITAL RAILCAR SERVICES CANADA COMPANY, an
unlimited liability company governed by the laws of Nova Scotia

(hereinafter referred to as the "Lessor")

OF THE FIRST PART

- and -

NOVA CHEMICALS LTD., a corporation governed by the laws of
Alberta

(hereinafter referred to as the "Lessee")

OF THE SECOND PART

WHEREAS the Lessee desires to lease the Units (as hereinafter defined) from the Lessor and the Lessor is willing to lease the Units to the Lessee upon the terms and conditions contained herein;

NOW, THEREFORE, this Lease witnesses that in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by each of the parties), the parties hereto covenant and agree as follows:

1. Definitions and Interpretations

1.1 Definitions. The following terms, whenever used in this Lease, shall have the following meanings, unless the context otherwise requires:

"**Affiliate**" of any Person means any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**After-Tax Basis**" means on a basis that any payment received or deemed to have been received by any Person shall be supplemented by a further payment to such

Person so that the sum of the two payments, after deduction of all taxes and other charges resulting from the receipt or accrual of both payments (taking into account any applicable credits, offsets or deductions actually arising or deemed to arise therefrom and the timing thereof) shall equal the payment received or deemed to have been received.

"Applicable Laws" means, in relation to any Person, property, transaction or event, all applicable provisions of federal, provincial, state or local laws, statutory rules, regulations, official directives and orders of all governmental authorities having jurisdiction in actions or proceedings in which such Person is a party or by which it is bound or having application to such Person, property, transaction or event.

"Appraisal" for a Unit means a written appraisal satisfactory to Lessor from the Appraiser setting forth the economic life of such Unit and stating (a) on the Closing Date, the Fair Market Value of such Unit and (b) on the Early Purchase Option Date, the estimated Fair Market Value of such Unit as of such Early Purchase Option Date, taking into account the appropriate rate of inflation during the Initial Term.

"Appraiser" means Railmark Inc.

"Assumptions" means the pricing assumptions set forth in Schedule C hereto.

"Basic Rent" for any Unit, subject to the adjustments provided for in Section 5.4 of this Lease means (a) with respect to any Rent Payment Date during the Initial Term, the amount set forth in Schedule A hereof opposite such Rent Payment Date, and (b) with respect to any Rent Payment Date during a Renewal Term, an amount determined in accordance with Section 6.3 hereof.

"Basis Point" or **"bp"** means the one hundredth (.01) of one percent.

"Bill of Sale" for any Unit means a bill of sale for such Unit from Lessee to Lessor in the form of Schedule A to the Sale Agreement.

"Board" means the Surface Transportation Board of the United States Department of Transportation.

"Business Day" means each day other than a Saturday, Sunday or day on which banks in the Provinces of Alberta or Ontario are required or authorized to close.

"Canadian Dollars", "Cdn. Dollars", and the symbols Cdn. \$ and \$ each means lawful money of Canada.

"Canadian Financial Institution" means a chartered bank, life insurance company, trust company, leasing company or other financial institution incorporated pursuant to any Canadian provincial or federal laws, which is considered by rating agencies in Canada to be of an investment grade quality, or its parent is considered by rating agencies in Canada to be of an investment grade quality and such parent provides a guarantee hereof.

"Casualty Loss Payment Date" for any Unit that has suffered a Casualty Occurrence means thirty (30) days following the earlier of (i) the date Lessee gives Lessor notice of such Casualty Occurrence; and (ii) the date Lessee is required to give such notice pursuant to Section 11.2 hereof.

"Casualty Occurrence" means any of the events referred to in Section 11.2 hereof.

"Certificate of Delivery and Acceptance" for any Unit means the Certificate of Delivery and Acceptance covering such Unit substantially in the form of Schedule F.

"Claim" has the meaning set forth in Section 26 hereof.

"Closing" means the completion of the transaction on the Closing Date whereby the Lessee sells the Units to the Lessor pursuant to the Sale Agreement and leases such Units from the Lessor pursuant to the terms hereof.

"Closing Date" means the 8th day of December, 1998 or such other date as the parties may agree.

"Confidentiality Agreement" means that certain Confidentiality Agreement dated the date hereof among Lessee and Lessor, the form of which is attached hereto as Schedule H.

"Debt Rate" means the interest rate on the Notes.

"Default" means any event which with the giving of notice or passage of time, or both, could become an Event of Default.

"Default Rate" means with respect to any amount payable under the Operative Agreements, a per annum rate of interest equal to the Debt Rate plus two percent (2%), but in no event more than the maximum contract rate permitted under Applicable Law.

"Direction" means that certain Direction dated December 8th, 1998 from Lessor to Lessee in respect of the direction of payments of Rent from Lessor into the Note Liquidation Account.

"Early Purchase Option Date" means March 27th, 2016.

"Early Purchase Option Price" has the meaning as defined in Section 6.2(a)(i) hereof.

"Equipment Cost" means the cost to Lessor for each Unit set forth on Schedule 1 to the Lease Supplement for such Unit and evidenced by the Bill of Sale.

"Event of Default" means any of the events referred to in Section 17.1.

"Excepted Payments" shall have the meaning ascribed to such term in the Indenture.

"Expiration Date" means the date which is twenty-two (22) years from the Closing Date.

"Fair Market Rental Value" of a Unit means an amount equal to the rental of such Unit which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession or a used equipment dealer) and an informed and willing lessor under no compulsion to lease. Fair Market Rental Value shall be determined based on the assumption that maintenance has been performed and improvements made in accordance herewith so that the Units meet, but do not exceed the requirements set forth in Section 9 and 16 hereof. Costs of removal from the location of current use shall not be a deduction from such value.

"Fair Market Value" of any Unit or of any addition or improvement to any Unit means an amount equal to the value of such Unit, addition or improvement which would be obtained in an arm's-length transaction between an informed and willing buyer-user (other than a buyer currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell and shall take into consideration the costs and expenses, including any taxes associated with the transfer of ownership, the intent being that buyer and seller each derive the same benefits and costs as in an arm's-length transaction with a third party. Fair Market Value shall be determined based on the assumption that maintenance has been performed and improvements made in accordance with this Lease so that Units meet, but do not exceed the requirements set forth in Section 9 and 16 hereof. Costs of removal from the location of current use shall not be a deduction from such value.

"GAAP" means Canadian generally accepted accounting principles as in effect from time to time.

"Income Taxes" has the meaning set forth in Section 27 hereof.

"Indemnified Tax" has the meaning set forth in Section 27 hereof.

"Indemnatee" means Lessor, the Indenture Trustee, the Noteholders, and their respective Affiliates, agents, servants, directors, officers, employees, successors and permitted assigns.

"Indemnity Payment" has the meaning set forth in Section 27.2 hereof.

"Indenture" means that certain Trust Indenture dated as of the date hereof between Indenture Trustee and Lessor.

"Indenture Trustee" means Montreal Trust Company of Canada and its successors and assigns, not in its individual capacity, except as expressly stated, but solely in its capacity as indenture trustee under the Indenture.

"Initial Term" means the term hereof that commences on the Closing Date and ends on the Expiration Date.

"Lease" means this Railcar Lease Agreement.

"Lease Supplement" means a supplement to the Lease in the form attached as Schedule F hereto.

"Leased Equipment" means collectively all Units subject to the Lease at any given time and described in each Lease Supplement.

"Lessee" means NOVA Chemicals Ltd., an Alberta corporation, or its successors or permitted assigns.

"Lessee Acknowledgement and Agreement" means the acknowledgement and agreement between Lessee, Lessor and the Indenture Trustee regarding, *inter alia*, the payment of Rent hereunder;

"Lessee Advisor" means CIBC World Markets.

"Lessee's Counsel" means Osler, Hoskin & Harcourt or such other external counsel that Lessee may appoint from time to time.

"Lessor" means GE Capital Railcar Services Canada Company, a Nova Scotia unlimited liability company or its successors and permitted assigns.

"Lessor's Counsel" means McCarthy Tétrault or such other external counsel that Lessor may appoint from time to time.

"Lessor Event of Default" means any of the events of default by Lessor as set forth in Section 17.2 hereof.

"Lessor Lien" means any Lien, other than a Permitted Lien or a Permitted Lessor Lien, arising as a result of (a) a claim against Lessor not related to the transactions contemplated by the Operative Agreements, (b) Taxes imposed against Lessor that are not indemnified by Lessee pursuant hereto or (c) a claim against Lessor arising out of a voluntary transfer or other voluntary disposition of the Leased Equipment or any interest of Lessor therein unless, in either case, (i) such transfer or disposition occurs in connection with the exercise of rights hereunder following an Event of Default, (ii) such transfer or disposition relates to a transfer to Lessee or (iii) such transfer or disposition relates to a transfer pursuant to Lessee's election to terminate the Lease pursuant to Section 4.2 hereof.

"Lessor's Effective Tax Rate" means, as of the Closing Date, the effective combined rate of federal and provincial income tax applicable to Lessor in the taxation year in which the Closing Date occurs, calculated on the basis that any tax rate increase that has been publicly announced by or on behalf of the relevant Minister of Finance before that date will be in effect throughout such taxation year, as reasonably determined by Lessor.

"Lien" means any mortgage, pledge, lien, charge, assignment, attachment, levy, security interest, hypothec or capital lease, conditional sale agreement, deemed trusts, equipment trust agreement or other title retention agreement or other encumbrance of whatsoever nature.

"Makewhole Amount" at any time means, in connection with any payment of Termination Value or Stipulated Loss Value hereunder, the amount calculated in accordance with the definition of such term in the Indenture in connection with the corresponding repayment of Notes by the Lessor at such time.

"Manufacturer" means National Steel Car Limited, a Canadian corporation.

"Material Adverse Effect" with respect to any Person means a material adverse effect on (a) the properties, business, operations or condition (financial or otherwise) of such Person and its Subsidiaries taken as a whole or (b) the ability of such Person to perform its obligations hereunder or under any other Operative Agreement to which such Person is a party.

"Material Adverse Tax Event" means an increase in Rent payments as a result of any event that should, as confirmed by an opinion of tax counsel mutually acceptable to Lessor and Lessee, require the Lessee to make an indemnity payment under Section 27 hereof provided that (i) the estimated aggregate of such indemnity payments made

over the then remaining term of this Lease is equal to at least 3 percent (3%) of the Rent payments payable over such remaining term for the affected Units; and (ii) the right to receive such indemnity payment is not waived by the indemnified person.

"Modification" to any Unit means an addition, improvement, alteration or modification to such Unit.

"Net Economic Return" means Lessor's net after tax yield through the Term to maintain the spread of the (i) pre-tax equivalent of Lessor's nominal after-tax return determined at Lessor's Effective Tax Rate in effect on the Closing Date using the multiple investment sinking fund method of analysis over (ii) the interpolated yield of the five year Government of Canada bond, all as computed on the basis of the same methodology and assumptions as were used by Lessor in the computation of Rent, Stipulated Loss Values, Termination Values, the Early Purchase Option and the amortization schedule related to the Notes.

"Note" has the meaning ascribed to such term in the Indenture.

"Note Assumption Agreement" means the agreement dated December 8th, 1998 among the Lessee, the Lessor and the Indenture Trustee in respect of the assumption of the Notes by Lessee in specified circumstances.

"Noteholder" has the meaning ascribed to such term in the Indenture.

"Note Liquidation Account" has the meaning ascribed to such term in the Indenture.

"Notice of Transfer" means a notice delivered under Section 25.4, substantially in the form attached hereto as Schedule G.

"Operative Agreements" means each of the Lease, the Lease Supplements, the Indenture, the Notes, the Sale Agreement, the Bill of Sale, the Certificate of Delivery and Acceptance, the Note Assumption Agreement, Direction and the Lessee Acknowledgement and Agreement.

"Partial Lot" means Units representing not less than 25% and not greater than 75% of the original number of Units as selected by Lessee and consented to by Lessor, such consent not to be unreasonably withheld.

"Participant" means collectively the Lessor, Indenture Trustee, each of the Noteholders and any replacements, successors or assignees thereof.

"party" means Lessee, Lessor and any successors and permitted assigns of Lessee and Lessor.

"Permitted Lessor Liens" means (a) the security interest created by the Indenture; (b) liens against one or more Units for taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of any Unit or any part thereof or interest therein; (c) undetermined or inchoate materialmen's, mechanic's, worker's, repairer's or employees' liens or other like liens against one or more Units arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension); (d) the rights of Lessee and any sublessee or assignee hereunder; and (e) liens or claims for which Lessee is responsible hereunder or which arise as a result of Lessee's use or possession of the Leased Equipment; and (f) liens permitted pursuant to Section 25.6 hereof.

"Permitted Liens" means (a) the respective rights of Lessee and any permitted sublessee and assignee hereunder, (b) Lessor Liens and Liens in favour of the Indenture Trustee, (c) liens for Taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings stay the enforcement thereof and the sale and forfeiture of any Unit, part thereof, title thereto or any interest therein, and (d) undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or employee's liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which have been bonded or the enforcement of which has been suspended (but only for the duration of such suspension).

"Person" means an individual, a corporation, a partnership, an unincorporated organization, an association, a joint venture, a trust, an estate, a government or any agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

"PPSA" means the *Personal Property Security Act* (Alberta), as amended from time to time.

"Purchase Option" has the meaning as defined in Section 6.2(a) hereof.

"Redelivery Site" has the meaning set forth in Section 16.1(a) hereof.

"Regulations" means the regulations to the Tax Act as amended from time to time.

"Renewal Term" means any period during which the Term is extended pursuant to Section 6.3 hereof.

"Renewal Units" has the meaning set forth in Section 6.3 hereof.

"Rent" means, collectively and severally, Basic Rent and Supplemental Rent.

"Rent Payment Date" for any Unit means each March 27 and September 27 during the Term of the Lease for such Unit, provided, however, that if any such day is not a Business Day, then such Rent Payment Date shall be the immediately succeeding Business Day.

"Replacement Unit" has the meaning set forth in Section 11.4 hereof.

"Required Modification" to any Unit means a Modification required to be made to such Unit by any governmental authority having jurisdiction with respect to the use, maintenance, condition and operation of such Unit or by the Manufacturer under any applicable warranty program or under the terms or conditions of any insurance policy maintained by Lessee pursuant to Section 7 hereof or any Manufacturer's directives.

"Responsible Officer" means, with respect to the subject matter of any covenant, agreement or obligation of any Person contained in any Operative Agreement, any corporate officer of, or other representative specifically authorized by, such Person who, in the normal performance of his or her operational duties, would have responsibility for such matter and would be familiar with the requirements of the applicable Operative Agreement with respect thereto.

"Sale Agreement" means the sale agreement dated December 8, 1998 between the Lessee as seller and the Lessor as buyer in respect of the purchase of the Units.

"Severable Modification" shall have the meaning ascribed to such term in Section 8.3 hereof.

"Stipulated Loss Value" at any time means the amount set forth in Schedule D opposite the relevant month plus, in each case, other than in connection with payment of the Stipulated Loss Value following the occurrence of a Casualty Occurrence pursuant to Section 11.3 hereof, the Makewhole Amount at such time.

"Subsidiary" of any Person means any entity of which more than fifty percent (50%) of its issued and outstanding shares of voting capital stock is owned, directly or indirectly, by such Person.

"Supplemental Rent" means the amounts payable pursuant to Section 5.2 hereof.

"Surplus Units" shall have the meaning ascribed to such term in Section 4.2 hereof.

"Tax" means any and all fees (including without limitation documentation, license, recording, filing and registration fees), taxes (including, without limitation, income,

gross receipts, ad valorem, goods and services, value added, turnover, sales, stamp, use, personal property (tangible and intangible), stamp, leasing, lease, user, leasing use, excise, franchise, transfer, fuel, excess profits, occupational, interest equalization and other taxes), levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any and all penalties, fines, additions to tax and interest thereon, whether or not such Tax shall be existing or hereinafter adopted. "Taxes" means every such Tax.

"**Tax Act**" means the *Income Tax Act* (Canada) as amended from time to time.

"**Tax Laws**" means collectively the Tax Act, Regulations and any Canadian provincial and territorial income tax legislation which may be enacted from time to time.

"**Term**" means the Initial Term and all Renewal Terms, if any.

"**Termination Date**" the date upon which any termination of this Lease by the Lessee pursuant to Section 4.2 hereof becomes effective.

"**Termination Value**" at any time means the amount opposite the relevant Rent Payment Date set forth in Schedule B plus, in each case, the Makewhole Amount at such time.

"**Transfer Taxes**" means all sales, use, excise, value added, goods and services, harmonized, import, export and other similar transfer taxes.

"**Unit**" means, unless the context otherwise requires, an item of Leased Equipment and "**Units**" means all of such items of Leased Equipment.

1.2 Schedules. The schedules to this Lease, as listed below, are an integral part of this Lease:

| | |
|------------|--|
| Schedule A | Basic Rent |
| Schedule B | Termination Values |
| Schedule C | Pricing Assumptions |
| Schedule D | Stipulated Loss Values |
| Schedule E | Certificate of Delivery and Acceptance |
| Schedule F | Form of Lease Supplement |
| Schedule G | Notice of Transfer |
| Schedule H | Confidentiality Agreement |

1.3 Interpretation. In this Lease, unless the contrary intention appears or the context otherwise requires:

- (a) a reference to this Lease or another instrument includes any variation, supplement or restatement of any of them;
- (b) a reference to any law includes regulations and other instruments under it and consolidations, amendments, re-enacts or replacements of any of it;
- (c) the singular includes plural and vice versa;
- (d) the word “including”, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (e) a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons or things is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (f) any reference in this Lease to any Section or Schedule shall, unless the context otherwise requires, be deemed to be a reference to a Section of, or a Schedule hereto. The words “hereto”, “hereof”, “herein”, “hereunder” and similar expressions mean and refer to this Lease.

1.4 Headings and Table of Contents. The headings, table of contents and section titles are inserted for convenience of reference only and do not affect the construction or interpretation of this Lease.

1.5 Monetary References. Whenever an amount of money is referred to herein, such amount shall, unless otherwise expressly stated, be in Canadian Dollars.

2. Purchase of Equipment

On the Closing Date and immediately prior to the execution of this Lease, the Lessee shall sell the Units to the Lessor pursuant to the terms of the Sale Agreement.

3. Lease of Equipment

Subject to all the terms, conditions and covenants of this Lease, the Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the Units on the Closing Date. The delivery and acceptance of each Unit hereunder shall be conclusively evidenced by the execution and delivery by the Lessee to the Lessor of a Certificate of

Delivery and Acceptance covering such Unit substantially in the form attached hereto as Schedule E, which Certificate shall be acknowledged by Lessor.

4. Term of Lease

4.1 Term. The Initial Term of this Lease as to each Unit shall commence on the Closing Date and, subject to Lessee's renewal option as provided in Section 6.3, shall end on the Expiration Date unless sooner terminated pursuant to Section 4.2, Section 6.2(a)(iii), Section 6.2(b), Section 11.3 or Section 18 hereof.

4.2 Voluntary Termination

- (a) **Lessee's Right of Termination.** After the seventh (7th) anniversary of the Closing Date and provided that no Default or Event of Default has occurred and is continuing but no more than once during each calendar year Lessee may terminate this Lease with respect to (i) the Units in any Partial Lot, or (ii) all Units then subject to this Lease, as of any Termination Date upon written notice to Lessor not less than ninety (90) days prior to such Termination Date if Lessee determines in good faith that such Units (the "Surplus Units") are obsolete in, or surplus to the business of Lessee, such determination being evidenced by a certificate of an officer of Lessee accompanying such written notice. Prior to the Termination Date, Lessee shall, at its own expense, act as Lessor's exclusive agent and use its reasonable efforts to solicit bids for the purchase of the Surplus Units in cash and the disposition of such Units to the third party cash purchasers. At least five (5) Business Days prior to such Termination Date, Lessee shall certify to Lessor the amount of each such cash bid and the name and address of each Person submitting a bid. Lessee agrees to use its reasonable efforts in connection with any such cash purchase, however, Lessee shall not be under a duty to solicit bids publicly or in any particular market and the acceptance of bids from any such cash purchasers shall be at Lessee's sole discretion. Lessee shall not be liable to Lessor or any other person for failure to obtain the best price for the Surplus Units. Lessor may, but is not obligated to, solicit such bids, and submit same for the purchase of the Surplus Units.
- (b) **Payment of Termination Value.** On such Termination Date, Lessee shall pay (i) to Lessor the amount, if any, by which the aggregate Termination Value of all Surplus Units for which this Lease is terminated, computed as of such Termination Date, exceeds the cash purchase price of such Units, and (ii) to all Persons entitled thereto all Supplemental Rent due on, or before such Termination Date and all accrued Basic Rent to such Termination Date and all other amounts owing hereunder, and (iii) to Lessor all of Lessor's reasonable out-of-pocket costs and expenses in connection with any such sale, including, without limitation, brokerage fees. In the event that the Surplus

Units are not sold by Lessee and the cash purchase price is not received by Lessor prior to the Termination Date, Lessee shall pay to Lessor the Termination Value of such Units on such Termination Date and, when the Surplus Units are sold, retain the proceeds of sale of such Surplus Units up to the amount of the Termination Value. Any proceeds received by Lessee from the sale of the Surplus Units which exceed the Termination Value thereof shall be paid to Lessor.

- (c) **Sale of Surplus Units.** Subject to Section 4.2(d), Lessor shall sell such Surplus Units to the highest bidder without recourse or warranty other than as to the absence of Lessor Liens. Such sale shall take place on the Termination Date at which time, and upon receipt by Lessor in immediately available funds of the full cash purchase price of the Surplus Units and the payment of the amounts, if any, to be paid by Lessee as provided in Section 4.2(b) and upon prepaying the applicable portion of the Notes as provided for in Section 4.1 of the Indenture, Lessor shall transfer to the purchaser all of Lessor's right, title and interest in and to the Surplus Units (without warranties other than as to the absence of Lessor Liens), and all obligations of Lessee under this Lease with respect to the Surplus Units after such Termination Date shall cease except for Lessee's obligation to pay Supplemental Rent in respect of such Surplus Units and such other obligations which, by the terms hereof, expressly survive the termination hereof.
- (d) **Lessor's Right to Retain Units.** No later than thirty (30) days after Lessor receives written notice of Lessee's election to terminate this Lease with respect to any Surplus Units, Lessor may notify Lessee that it intends to retain such Surplus Units on the Termination Date, in which case Lessor shall be obligated to prepay the applicable portion of the Notes as provided in Section 4.1 of the Indenture, and Lessee shall discontinue its efforts to sell the Surplus Units and shall return such Surplus Units to Lessor on such Termination Date as provided in Section 16 hereof. If, on the Termination Date, Lessor has paid all amounts due to Noteholders pursuant to the Indenture with respect to termination hereof for such Surplus Units, all obligations of Lessee hereof with respect to such Surplus Units after such Termination Date shall cease except for Lessee's obligations which, by the terms hereof, expressly survive the termination hereof.

5. Payment of Rent

- 5.1 **Basic Rent.** Lessee hereby agrees to pay Basic Rent and any applicable Transfer Taxes to Lessor or to such Person as Lessor shall direct for each Unit on each Rent Payment Date for such Unit. Schedule A hereto indicates whether an installment of Basic Rent is payable in advance or in arrears. Lessor and Lessee agree that unless contrary to Applicable Law, for tax purposes each installment of Basic Rent that is

indicated as payable in advance will be allocated for tax purposes over the six-month period beginning on the Rent Payment Date on which such advance payment is scheduled to be made, and each installment of Basic Rent that is indicated as payable in arrears will be allocated for tax purposes over the six-month period ending on the Rent Payment Date on which such arrears payment is scheduled to be made. For so long as the Notes remain outstanding, Lessee shall pay Basic Rent directly to the Note Liquidation Account pursuant to the Direction. All applicable Transfer Taxes shall be paid by Lessee to Lessor by wire transfer to such account as Lessor may designate from time to time.

5.2 Supplemental Rent. Any and all amounts, liabilities and obligations (other than Basic Rent) which Lessee assumes or agrees to pay to Lessor hereunder or under any other Operative Agreement, including, without limitation, payments of Stipulated Loss Value, Termination Value, Early Purchase Option Price, Fair Market Rental Value, Fair Market Value, other payments provided for in Section 4.2, Section 6.2, Section 11, Section 26 and Section 27 hereof shall be paid as Supplemental Rent promptly as the same shall become due and owing, and in the event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor or its assigns shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. Lessee will also pay on demand to Lessor, as Supplemental Rent, to the extent permitted by Applicable Law, interest at the Default Rate on any part of any installment of Basic Rent, any payment of Stipulated Loss Value and any payment of Termination Value not paid when due for the period for which the same shall be overdue and unpaid and on any other payment of Supplemental Rent not paid when demanded by Lessor, the Indenture Trustee or the Noteholders from the date demanded until the same shall be paid. For so long as the Notes remain outstanding, Lessee shall pay all Supplemental Rent, other than Excepted Payments, directly to the Note Liquidation Account pursuant to the Lessee Acknowledgement and Agreement.

5.3 Obligation to Pay. All expenses arising from the ownership, use and operation of the Units including, but not limited to maintenance, insurance, licenses and permits are for the account of Lessee. Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation: (a) any setoff, counterclaim, recoupment, deduction, defense or other right which Lessee may have against Lessor or against any assignee of Lessor, Manufacturer, any Noteholder, the Indenture Trustee, or anyone else for any reason whatsoever; (b) any defect in the title or other ownership interests, condition, design, operation, merchantability or fitness for use of any Unit; (c) any breach, default or misrepresentation by Lessor; or (d) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or Lessor. If for any reason whatsoever this Lease is terminated in whole or in part by operation of law or otherwise except as specifically provided herein, Lessee nonetheless agrees to pay to Lessor an amount equal to each payment of Basic Rent at the time such payment

would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part, it being the intention of the parties hereto that Rent and other amounts payable by Lessee hereunder with respect to a Unit shall continue to be payable in all events unless the obligation to pay the same is terminated pursuant to the express terms hereof or until such Unit has been returned to the possession of Lessor pursuant to Section 16, and Lessee has paid to Lessor all amounts due and owing by Lessee hereunder and under the other Operative Agreements. For all purposes of this Lease, no Unit shall be deemed to have been returned to Lessor's possession until all of Lessee's obligations with respect to the return, insurance, transportation and storage of such Unit have been performed. Lessee hereby waives, to the extent permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease, except in accordance with the express terms hereof. Each payment of Rent made by Lessee shall be final, and Lessee will not seek to recover all or any part of such payments from Lessor or any other person for any reason whatsoever. This provision, however, shall not be construed to waive Lessee's right of action, if any, against Lessor or any other Person for damages incurred by Lessee on account of any breach by Lessor or such other Person of any provision of this Lease or any other agreement whether or not relating hereto.

5.4 Adjustment of Basic Rent, Stipulated Loss Values, Termination Values, Early Purchase Option Price

- (a) **Bases for Adjustment.** Basic Rent, Termination Values, Stipulated Loss Values and the Early Purchase Option Price shall be adjusted upward or downward at any time after the Closing Date to reflect (A) a refinancing of the Notes following prepayment in full of all amounts owing to Noteholders (including any Makewhole Amount), which costs and expenses are financed through a Basic Rent adjustment, and (B) any tax indemnity payment which is financed through a Basic Rent adjustment.
- (b) **Computation of Changes.** Each adjustment shall be calculated to preserve Lessor's Net Economic Return and aggregate after-tax cash flow while minimizing the net present value (i) as of the Closing Date, of all Basic Rent for the Units, using a discount rate equal to the interest rate on the Notes, and (ii) as of the date of any refinancing of the Notes, of all Basic Rent due after such date, using a discount rate equal to the interest rate applicable to the refinancing. Lessor shall compute each such adjustment based on the same assumptions and methodology (including tax constraints) that were used in calculating the Basic Rent, Termination Values, Stipulated Loss Values, Early Purchase Option Price and amortization schedule related to the Notes. Any adjustment, whether before or after the Closing Date, will be subject to confirmation by the Lessee and subject to verification by the Lessee Advisor.

Lessee shall notify Lessor within ten (10) days of receipt of any proposed adjustment if Lessee does not agree therewith and, if requested by Lessee, such adjustment shall be verified on a confidential basis by a nationally recognized certified public accounting or lease advisory firm selected by Lessee and reasonably acceptable to Lessor. Any adjustment made pursuant to this Section 5.4 shall be evidenced by the execution and delivery by Lessor and Lessee of a supplement to this Lease.

- (c) **Limitations.** Anything contained in this Lease or any other Operative Document to the contrary notwithstanding, (i) each aggregate installment of Basic Rent payable hereunder for the Leased Equipment, whether or not adjusted in accordance with this Section 5.4, shall be in an amount at least sufficient to pay in full, on the Rent Payment Date (or the next succeeding Business Day, as applicable) on which such installment of Basic Rent is due, any payments then required to be made on account of the principal of and interest on the Notes then outstanding in accordance with the amortization schedule and payment terms therefor set forth in the Indenture and (ii) the aggregate Stipulated Loss Value, Termination Value and Early Purchase Option Price of the Leased Equipment payable on any date in accordance with the terms hereof, together with Basic Rent, if any, payable in arrears and then due and payable, shall under all circumstances and in any event at least equal an amount not less than the then outstanding principal amount of the Notes plus accrued and unpaid interest thereon and any other amounts payable to the Noteholders (including any Makewhole Amount) to such date (or the next succeeding Business Day, as applicable).
- (d) **Manner of Payment.** Lessee shall pay all Rent due to Lessor at its offices set forth in Section 15.2 (or to such other location as Lessor may so specify from time to time to Lessee at least ten (10) Business Days before the date of any payment) in Cdn. Dollars prior to 9:00 a.m. Calgary time by wire transfer in immediately available funds on the due date thereof, provided, however, that so long as the Indenture shall not have been discharged pursuant to the terms thereof, all Rent (excluding Excepted Payments) payable to Lessor shall be paid directly to the Note Liquidation Account according to the terms of the Lessee Acknowledgement and Agreement or at such other location in Canada as the Indenture Trustee may otherwise direct. All Excepted Payments shall be paid to an account designated by Lessor to Lessee from time to time.

6. Sublease and Assignment; Purchase and Renewal Option

6.1 Sublease and Assignment

- (a) **Sublease.** If no Default or Event of Default has occurred and is continuing, Lessee may sublease, subject to the following terms and conditions, any Unit

to a user incorporated in Canada with its principal place of business in Canada and not subject to any bankruptcy or insolvency proceedings. Each such sublease (i) shall by its express terms be subject and subordinate to the terms and conditions of this Lease and the rights and interests of Lessor hereunder and the rights and interests of the Indenture Trustee and the Noteholders under the Indenture, (ii) shall not extend beyond the Expiration Date or any extension thereof as to which Lessee has exercised its option pursuant to the provisions of Section 6.3 hereof, (iii) shall not contain terms that are less onerous than those required of Lessee in accordance with the terms of this Lease (including, without limitation, terms dealing with use, maintenance and operation of the Leased Equipment, Lessor's inspection rights, repossession rights and other remedies upon an Event of Default but this requirement shall only be applicable to the extent such obligation in respect of the Leased Equipment is transferred in full to the sublessee by such sublease), (iv) shall require the sublessee to maintain accidental pollution insurance coverage if such coverage is appropriate under prudent business practices or required by law given the character of the use and operation of the Units by such sublessee, and (v) shall require the sublessee to effect all filings and registrations necessary to perfect, protect and preserve the interests of the Lessee, the Lessor and the Indenture Trustee in such jurisdictions as Lessor and the Indenture Trustee deem advisable, acting reasonably, and, in the event that the sublease is for a term of over one year or creates a Security Interest (as such term is defined in the PPSA or its equivalent under other applicable personal property security legislation), provide to the Lessor and the Indenture Trustee a legal opinion that all such filings and registrations have been made. Any such sublease (i) with a term of less than one (1) year; or (ii) to a sublessee that is investment grade or, if such sublessee is not rated, has a tangible net worth in excess of one hundred million dollars (\$100,000,000); or (iii) to a sublessee that is a recognized Class 1 North American railroad, shall not require Lessor consent; all other subleases require the consent of Lessor which consent shall not be unreasonably withheld. Lessee may sublease in accordance with the foregoing provisions using a recognized railcar broker, subject to Lessor's right of first refusal to broker the Units.

- (b) **Assignment.** If no Default or Event of Default has occurred and is continuing, Lessee may assign all but not less than all of its rights under this Lease to (i) any directly or indirectly wholly-owned Affiliate of NOVA Corporation, or (ii) to any other user not subject to any bankruptcy or insolvency proceedings with the consent of Lessor, which consent shall not be unreasonably withheld, provided that the assignee effects all filings and registrations necessary to perfect, protect and preserve the interests of the Lessee, the Lessor and the Indenture Trustee in such jurisdictions as Lessor and the Indenture Trustee deem advisable, acting reasonably, and provides to

the Lessor and the Indenture Trustee a legal opinion that all such filings and registrations have been made.

- (c) **Sublessee's and Assignee's Right to Perform for Lessee.** The performance of any obligation of Lessee hereunder by a permitted sublessee or permitted assignee in accordance with the terms hereof and the terms of all other applicable Operative Agreements shall constitute performance by Lessee of such obligation, even if such obligation is stated herein to be a direct obligation of Lessee. Lessee may assign to a permitted assignee or permit a permitted sublessee the right to exercise any right of Lessee hereunder.
- (d) **Lessee Primarily Liable.** No such sublease or assignment shall in any way relieve Lessee from any obligations under this Lease and Lessee shall remain primarily liable to the same extent as if there were no such sublease or assignment, and Lessee hereby waives any rights it may now have or hereafter acquire to avoid any such obligation by reason of such sublease or assignment or any circumstances arising from such sublease or assignment. Lessee shall also pay all reasonable costs and expenses, including legal fees and expenses, of Lessor, the Indenture Trustee and the Noteholders incurred as a result of any such sublease or assignment.
- (e) **Notice.** Lessee shall give Lessor and the Indenture Trustee prior written notice of any assignment or sublease referred to in this Section 6.1.

6.2 Purchase Options

- (a) **Generally.** If no Default or Event of Default has occurred and is continuing, upon not less than ninety (90) days' prior written notice to Lessor, Lessee or its designee shall be entitled to purchase (the "Purchase Option"):
 - (i) any Partial Lot or all of the Leased Equipment on the Early Purchase Option Date total purchase price equal to \$19,673,353.50 , or pro rata portion thereof in the case of a Partial Lot purchase (the "Early Purchase Option Price");
 - (ii) any Partial Lot or all Leased Equipment on the Expiration Date at a purchase price equal to the Fair Market Value of such Units at the time of such purchase payable on the Expiration Date; or
 - (iii) any Partial Lot or all of the Leased Equipment on the last day of any Renewal Term at a purchase price equal to the Fair Market Value of such Units at the time of such purchase payable on such last day.

The Early Purchase Option Price shall be paid in 5 installments: (i) \$12,233,805.92 on the Early Purchase Option Date, (ii) \$1,859,886.89 on April 16, 2016, (iii) \$1,859,886.89 on June 16, 2016, (iv) \$1,859,886.89 on September 16, 2016, and (vi) \$1,859,886.89 on December 16, 2016 (or, in each case, a pro rata portion thereof in the case of Partial Lot purchase). Title to the Units will not pass to Lessee until payment in full of the Early Purchase Option Price together with all other amounts due or owing hereunder is made to Lessor.

- (b) **Material Adverse Tax Event.** If no Default or Event of Default has occurred and is continuing, and if a Material Adverse Tax Event has occurred with respect to any or all of the Units, upon not less than thirty (30) days' prior written notice to Lessor, Lessee, or its designee, may purchase such Units at a purchase price equal to the Termination Value of such Units at the time of such purchase.
- (c) **Payment of Purchase Price.** On the sale date of a Unit, Lessee shall pay (i) to Lessor the purchase price of such Unit as set forth in the applicable provisions of Section 6.2(a) or (b), as the case may be; (ii) all accrued and unpaid Basic Rent; and (iii) to all Persons entitled thereto all Supplemental Rent due on or before such sale date.
- (d) **Sale of Units.** On the sale date, and upon receipt by Lessor in immediately available funds of the full purchase price of such Units as set forth in the applicable provisions of Section 6.2(a) or (b), as the case may be, and the payment of the amounts, if any, to be paid by Lessee as provided in Section 6.2(c), Lessor shall transfer to Lessee or a designee of Lessee all of Lessor's right, title and interest in and to such Units and, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale for such Units (without warranties other than as to the absence of Lessor Liens) and all obligations of Lessee under this Lease with respect to such Units after such sale date shall cease except for Lessee's obligations which, by the terms hereof, expressly survive the termination of this Lease.

6.3 Renewal Option

- (a) **Generally.** If no Default or Event of Default has occurred and is continuing, upon not less than one hundred twenty (120) days' prior written notice, Lessee may renew this Lease with respect to Units constituting not less than a Partial Lot or all Leased Equipment (the "Renewal Units") at the Expiration Date for a term of three (3) years and then two (2) successive terms of one (1) year each (each being a "Renewal Term").

- (b) **Terms of Renewal.** The rent payment terms of a renewal at the Expiration Date shall provide that Basic Rent shall be payable in semi-annual payments in arrears on each Rent Payment Date in an amount equal to the aggregate Fair Market Rental Value of the Renewal Units, and the rent payment terms of a renewal at the end of any first Renewal Term shall provide that Basic Rent shall be payable in semi-annual payments in arrears on each Rent Payment Date in an amount equal to the aggregate Fair Market Rental Value of such Renewal Units.

6.4 Fair Market Value and Fair Market Rental Value. For purposes of this Section 6, Section 8.3(b) and Section 16.4, the following procedure shall be followed for determining the Fair Market Value or Fair Market Rental Value of the Units. If either party hereto gives written notice to the other requesting determination of such value, the parties shall attempt to agree upon such value, and, failing such agreement within fifteen (15) days after the giving of such notice, the parties shall consult for the purpose of appointing one qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within thirty (30) days after such notice has been given, each party shall appoint an independent appraiser (who shall not be the Manufacturer) within thirty-five (35) days after such notice is given, and the two appraisers so appointed shall within forty (40) days after such notice is given appoint a third independent appraiser (who shall not be the Manufacturer). If no such third appraiser is so appointed within forty (40) days after such notice is given, either party may apply under the *Arbitration Act* (Alberta) to have an arbitrator appoint an appraiser and both parties shall be bound by any appointment made by such arbitrator. Each appraiser appointed pursuant to the foregoing procedure shall be instructed to determine what in their view is the Fair Market Value or Fair Market Rental Value, as the case may be, of the Units in question within thirty (30) days after his or her appointment. If the parties have appointed a single appraiser, his or her determination of value shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. If three appraisers have been appointed, the values determined by the three appraisers shall be averaged, the determination which differs the most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. If the parties have appointed a single appraiser, Lessee shall bear all expenses of such appraiser, and if three appraisers have been appointed, Lessor and Lessee shall bear all expenses of such appraisers equally.

7. Insurance

- 7.1 Generally.** Lessee will, at all times prior to the return of the Leased Equipment to Lessor, at its own expense, carry and maintain or cause to be carried and maintained, including at Lessee's option through a self-insurance program, (a) property insurance with respect to the Leased Equipment and (b) public liability insurance with respect

to third party personal injury and third party property damage, in each case, with such deductibles, in such amounts, against such risks and with such insurance companies of established good reputation and good financial condition as is consistent with prudent business practices, and in any event with no greater deductibles and at least comparable in amounts and against risks insured against by Lessee with respect to equipment it owns or leases that is similar in nature to the Leased Equipment.

7.2 Policies. Subject to the terms and conditions of the policies, any insurance carried in accordance with this Section 7 shall, to the extent commercially available:

- (a) require thirty (30) days' prior written notice to Lessor and Indenture Trustee of cancellation or material change in coverage;
- (b) as to public liability insurance, provide that Lessor and Indenture Trustee will be additional insureds with respect to and only to the extent of Lessee's obligations to indemnify and hold harmless such additional insureds from and against claims arising from third party personal injury or third party property damage;
- (c) as to public liability insurance, provide that such insurance is primary without right of contribution from any other insurance which might otherwise be available to the insured party;
- (d) to the extent Lessee maintains property insurance, as to such insurance, provide that in the event of any loss payment under a policy, the insurer shall waive any rights of subrogation against the insured party and shall waive any setoff or counterclaim or any other deduction whether by attachment or otherwise;
- (e) as to public liability insurance, include a cross-liability and severability of interest provision providing that (i) inasmuch as the policies are written to cover more than one insured, all terms and conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured, and (ii) that any breach of the policy by any insured shall not affect the protection given by the policy to any other insured; and
- (f) not require any of the Lessor, the Indenture Trustee and the Noteholders to pay premiums in connection with such insurance.

7.3 Reports. On or prior to the Closing Date and thereafter no later than the fifth (5th) Business Day following the expiration of any policy maintained pursuant to this Section 7, Lessee shall deliver to Lessor and Indenture Trustee certificates of insurance issued by the insurers under policies required pursuant to this Section 7 or

by an authorized insurance broker evidencing the insurance maintained pursuant to this Section 7; provided, however, that a delay in the delivery of any certificate shall not constitute a breach of this Lease if Lessee delivers to Lessor and Indenture Trustee either (a) a certified copy of a binder with respect thereto or (b) a certificate of a Responsible Officer containing a description of such insurance and, in either case, delivers the formal certificate upon receipt thereof. The certificate shall clearly indicate that each of the Participants are additional insureds by specifically referencing the definition of Participants in this Lease.

- 7.4 Performance by Lessor.** If Lessee fails to maintain insurance as herein provided, Lessor may at its option, but without obligation, provide such insurance and, in such event, Lessee shall, upon demand from time to time, reimburse Lessor for the cost thereof together with interest on such cost at the Default Rate computed from the date of payment of such cost to the date of reimbursement. Lessor shall give Lessee prompt written notice of any such insurance.
- 7.5 Proceeds.** If no Default or Event of Default has occurred and is continuing, all property insurance proceeds, if there are any, other than proceeds resulting from a Casualty Occurrence, shall be paid to Lessee. If a Default or Event of Default has occurred and is continuing, all property insurance proceeds shall be paid to Indenture Trustee so long as the Lien of the Indenture has not been released and thereafter shall be paid to Lessor, in each case to be held as security for the performance by Lessee of its obligations under this Lease and, so long as the Lien of the Indenture has not been released, applied in accordance with the terms of the Indenture. If a Casualty Occurrence has occurred, all property insurance proceeds with respect to such Casualty Occurrence shall be paid to Lessor.
- 7.6 Separate Insurance.** Nothing in this Section 7 shall be construed to prohibit Lessor or Indenture Trustee from providing at its own expense property insurance or public liability insurance with respect to the Leased Equipment or its interest therein; provided however, that any insurance so maintained shall not provide for or result in a reduction of the coverage or the amounts payable under any of the insurance required to be maintained by Lessee under this Section 7.

8. Modifications

- 8.1 Generally.** From time to time during the term of this Lease, Lessee may acquire and install, at Lessee's sole cost and expense, severable and non-severable Modifications to a Unit that do not (a) materially impair the value, utility, residual value or remaining useful life (each determined as of the Closing Date of such Unit hereunder, and taking into account ordinary wear-and tear) such Unit would have had, had such alteration, modification, removal or addition not occurred, and assuming such Unit was maintained in the condition required by the terms of this Lease, or (b) materially change the nature, use, type or capacity of such Unit. Without Lessor's prior written

consent, which consent will not be unreasonably withheld, Lessee may not make any Modification to a Unit that would cause a change in the classification of the Unit by the Association of American Railroads.

8.2 Required Modifications. Lessee agrees to make, at Lessee's sole cost and expense and without offset for Rent due hereunder, all Required Modifications to the Leased Equipment.

8.3 Severable Modifications. If (i) Lessee installs, at its own expense, any Modification to any Unit which (A) is not a Required Modification, (B) is in addition to, and not in replacement of or substitution for, any part incorporated or installed in or attached or added to such Unit on the Closing Date, (C) is readily removable without causing material damage to such Unit or any Required Modification, and (D) does not impair the value, utility, residual value or remaining useful life such Unit would have had at such time, had such Modification not occurred, assuming such Unit was maintained in the condition required by the terms of this Lease (a "Severable Modification") and (ii) no Default or Event of Default has occurred and is continuing, Lessee shall own such Severable Modification and may remove such Severable Modification before such Unit is returned to Lessor. Lessee shall repair all material damage to such Unit resulting from such installation and removal so as to restore such Unit to the condition such Unit would have had at such time, had such Severable Modification not occurred, assuming such Unit was maintained in the condition required by the terms of this Lease. Lessee need not remove any such Severable Modification if the retention of such Severable Modification will not impair the value, utility, residual value or remaining useful life of such Unit in the possession of Lessor. Any Severable Modification not so removed shall, upon the return of such Unit, become the property of Lessor and title thereto shall vest thereupon in Lessor, free and clear of all Liens.

8.4 Nonseverable Modifications. Lessee shall not remove from any Unit any Modification that is not a Severable Modification. Any such Modification shall become the property of Lessor immediately upon such Modification being attached to such Unit and title thereto shall immediately vest in Lessor, free and clear of all Liens.

9. Use, Maintenance and Operation

9.1 Generally. Lessee shall not use, or permit the use of, (a) any Unit for the transportation of commodities that are corrosive, toxic, more dense or more abrasive on the linings of the Leased Equipment than plastic pellets and plastic resin, (b) any Unit in any location outside of the continental United States, Canada and Mexico or (c) more than 10% of the Units in Mexico at any one time. Lessee, at its own expense, will maintain, service, test and repair each Unit and from time to time make or cause to be made all necessary restorations thereto as are consistent with the prudent practice of reputable chemical shippers and receivers, but in any event to the same

extent that Lessee would, in the prudent management of its railcars, maintain, service and repair comparable railcars if owned or leased by Lessee and to the extent necessary that such Unit will remain (i) in good operating condition and in the same condition as when delivered, ordinary wear and tear excepted, (ii) in accordance with Manufacturer's warranties, (iii) in accordance with the terms or conditions of any insurance policy maintained by Lessee pursuant to Section 7 and (iv) in compliance with Section 9.2. Any replacement of parts made by Lessee to or upon any Unit shall have a value, utility, residual value and remaining useful life at least equal to the replaced parts, shall be free and clear of all Liens and shall be considered accessions to such Unit. Title thereto shall be immediately vested in Lessor without cost or expense to Lessor, provided that upon such replacement parts being attached to or inserted in such Unit in accordance herewith, the replaced parts shall no longer be the property of Lessor.

9.2 Compliance with Law. Lessee shall comply with the maintenance and operation standards under the *Canada Transportation Act*, the Interchange Rules of the Association of American Railroads and the Federal Railroad Administration and all laws, rules, regulations, requirements and orders of all governmental authorities having jurisdiction with respect to the use, maintenance, condition and operation of each Unit (regardless of upon which person such laws, rules, regulations, requirements or orders shall, by their terms, be nominally imposed), unless Lessee is contesting the validity thereof in good faith and by appropriate proceedings, but only so long as such proceedings (a) do not involve any material risk of the sale, forfeiture or loss of such Unit, or any part thereof or interest therein, (b) do not result in, or involve any material risk of resulting in, the creation of any Lien on or with respect to such Unit, or any part thereof or interest therein, which is not a Permitted Lien and (c) do not involve any risk of the imposition of civil or criminal fines or penalties on any Lessor, the Indenture Trustee and the Noteholders. Lessee shall maintain all records, logs and other materials required by any governmental authority having jurisdiction to be maintained in respect of any Unit, regardless of upon which person any such requirements shall, by their terms, be nominally imposed, and such records, logs and other materials shall be the property of Lessor and made available for inspection by the Indenture Trustee in conjunction with its right to inspect the Units pursuant to section 9.4 of this Lease. Lessee shall, at Lessor's reasonable request and at Lessor's expense, provide copies of such logs and maintenance records to Lessor. Lessee, at its own expense, will procure and pay for all permits, franchises, inspections and licenses necessary or appropriate in connection with any Unit and any Modification thereto.

9.3 Lessor's Right to Perform. Lessor is not required to maintain, service or repair, or to make any repair, restoration, replacement, renewal, addition, improvement, alteration or modification of any nature or description with respect to any Unit, or, except to the extent specifically provided herein, to incur any such cost or expense in connection with this Lease. If Lessee fails or is unable to perform maintenance and

repairs as provided herein, Lessor may, but need not, perform the same, and Lessee shall forthwith reimburse Lessor for all costs and expenses incurred by Lessor in performing the same.

- 9.4 Inspection Rights.** Upon three (3) Business Day's prior written request of Lessor or Indenture Trustee, Lessee shall provide to such Person as to each Unit the actual location of or transportation information about such Unit, indicating its point of departure, destination, route and scheduled date of arrival at such destination. Each of Lessor and the Indenture Trustee may inspect the Leased Equipment (a) at its own expense, (b) through no more than two (2) of its agents and employees, (c) not more than one (1) time during any twelve (12) month period, and (d) at reasonable times during normal business hours, and shall have the right of access to Lessee's premises where any Unit is located for the purposes of so inspecting such Unit and its applicable maintenance records and observing its use and operation; provided, however, that such inspections shall be conducted by Lessor and Indenture Trustee in a manner which is in accordance with the Lessee's inspection safety guidelines and standards and which does not unreasonably interfere with Lessee's business or the operation and maintenance of the Units.

10. Title

- 10.1 Agreement of Lease.** Lessor and Lessee agree that this is an agreement of lease only and nothing herein contained shall be construed as conveying to Lessee any right, title or interest in or to the Leased Equipment except as a lessee. Lessor and Lessee intend that the Leased Equipment is and shall remain personal property and each of them agrees that it will not take any action which would cause any Unit to lose such character. The Leased Equipment shall remain personal property regardless of the degree or manner of its attachment to realty, and title thereto shall remain exclusively in Lessor subject to the security interest of Indenture Trustee. Lessee shall keep the Leased Equipment free from any and all liens, encumbrances and claims (except Permitted Liens) in accordance with Section 14 and shall not do or permit any act or thing whereby Lessor's title or rights may be encumbered or impaired. Notwithstanding the foregoing, should any Lien be expected to attach to the Leased Equipment as a result of a merger, amalgamation or consolidation (including a sale, lease or other disposition of the properties of a corporation or other entity as an entirety or substantially as an entirety to Lessee) (collectively the "Terminating Lien Event") by Lessee with a Subsidiary, Affiliate or other corporation or entity (the "Merging Party"), Lessee shall take such steps as it deems reasonable to obtain, prior to the closing date of the Terminating Lien Event, an acknowledgement from each of the secured creditors of such Merging Party that each such secured creditor has no interest, and would in future have no interest, in the Leased Equipment prior to the completion of such Terminating Lien Event. If unable to obtain such acknowledgement, Lessee shall, on or before the closing date of the Terminating Lien Event (the "Terminating Lien Payment Date") terminate the Lease and purchase all

but not less than all, of the Leased Equipment from Lessor for a purchase price equal to the Stipulated Loss Value for the month in which the Terminating Lien Payment Date occurs. On such Terminating Lien Payment Date, Lessee shall pay to Lessor in immediately available funds (a) an amount equal to the Stipulated Loss Value of such Leased Equipment, (b) the unpaid Basic Rent, if any, accrued to and including such Terminating Lien Payment Date and (c) all unpaid Supplemental Rent with respect to such Leased Equipment. Upon the making of such payments by Lessee, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to such Leased Equipment and, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale for such Leased Equipment (without warranties other than as to the absence of Lessor Liens).

- 10.2 Filings.** Lessee agrees that it will execute, acknowledge, deliver, file, register and record whenever required this Lease (or a summary thereof or financing statement relating thereto) together with any and all amendments or supplements hereto under Section 105(1) of the *Canada Transportation Act*, under the PPSA in Alberta and with the Board under s. 11301 of the *Surface Transportation Board Act* (United States) in Washington D.C. for the purpose of protecting Lessor's title to, and Indenture Trustee's security interest in, any Unit. Such filings shall be made by Lessee on or prior to the Closing Date. Lessee shall pay all costs, charges and expenses incident to any such delivery, filing, registration and recording or incident to the taking of the actions required by this Section 10.2.

11. Risk of Loss: Casualty Occurrence

- 11.1 Lessee's Risk of Loss and Damage.** During the term of this Lease and for so long thereafter as the Leased Equipment remains in the possession of Lessee, Lessee shall bear the entire risk of and all responsibility for loss or damage to the Leased Equipment and, except as otherwise expressly provided herein, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Unit. Lessee agrees to indemnify and hold each Participant harmless against all risks, including loss or damage to the Leased Equipment caused by any reason whatsoever but not limited to fire, lightning, tornadoes, hurricanes, wind storm, water damage, explosion, smoke and smudge, aircraft and motor vehicle damage, strikes, riots, civil commotion, vandalism, malicious mischief, burglary and theft and all other risks to the Leased Equipment.

11.2 Casualty Occurrence. If:

- (a) (i) ten (10) or less Units are or become lost for a period of more than one hundred eighty (180) consecutive days, or are stolen or destroyed; or (ii) if more than ten (10) Units are or become lost for a period of more than sixty (60) consecutive days or are stolen or destroyed,

- (b) any Unit suffers an actual total loss, or a constructive total loss based on an insurance settlement, or, in Lessee's reasonable good faith judgment, is irreparably damaged or contaminated or damaged or worn out beyond economic repair, from any cause whatsoever,
- (c) any Unit is permanently returned to Manufacturer pursuant to any indemnity provision, or
- (d) (i) ten (10) or less Units have their title taken, condemned or requisitioned or, if resulting in loss of possession by Lessee for a period of more than one hundred eighty (180) consecutive days or for a stated period which exceeds the then remaining term of this Lease with respect to such Units, is taken or requisitioned by condemnation or otherwise prior to the actual redelivery of such Units to Lessor; or (ii) if more than ten (10) Units have their title taken, condemned or requisitioned or, if resulting in loss of possession by Lessee for a period of more than ninety (90) consecutive days or for a stated period which exceeds the then remaining term of this Lease with respect to such Units, is taken or requisitioned by condemnation or otherwise prior to the actual redelivery of such Units to Lessor

(any such event herein called a "Casualty Occurrence"), Lessee shall inform Lessor of such Casualty Occurrence and the date thereof promptly, but in any event within thirty (30) days from the Casualty Occurrence, by delivering to Lessor a certificate of a Responsible Officer certifying such Casualty Occurrence and in such notice shall, at its option, elect either (i) to purchase such Unit on or before the Casualty Loss Payment Date for such Unit, pursuant to Section 11.3 or (ii) subject to satisfaction of the conditions set forth in Section 11.4, to replace such Unit on or before the Casualty Loss Payment Date for such Unit.

11.3 Purchase of Unit. If Lessee elects to purchase a Unit that has suffered a Casualty Occurrence, Lessee shall purchase such Unit from Lessor on its Casualty Loss Payment Date for a purchase price equal to the Stipulated Loss Value for the month in which the Casualty Loss Payment Date Occurs. On such Casualty Loss Payment Date, Lessee shall pay to Lessor in immediately available funds (a) an amount equal to the Stipulated Loss Value of such Unit, (b) the unpaid Basic Rent, if any, accrued to and excluding such Casualty Loss Payment Date and (c) all Supplemental Rent with respect to such Unit due and unpaid. Upon the making of such payments by Lessee in respect to any Unit, (i) Basic Rent with respect to such Unit shall cease to accrue as of the date of such payment, (ii) the term of this Lease as to such Unit shall terminate, (iii) Lessee shall be entitled to recover possession of such Unit and (iv) Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to such Unit and, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale for such Unit (without warranties other than as to the absence of Lessor Liens).

11.4 Replacement of Unit. If Lessee elects to replace a Unit that has suffered a Casualty Occurrence, and in lieu of purchasing such Unit pursuant to Section 11.3, Lessee may convey or cause to be conveyed to Lessor to be leased to Lessee hereunder a replacement railcar (a "Replacement Unit") (a) of the same car type, (b) of the same or a later year of manufacture as the Unit replaced, (c) free and clear of all Liens and (d) having a Fair Market Value, utility, remaining economic useful life, residual value and condition at least equal to the Unit so replaced, assuming such Unit was in the condition required to be maintained by the terms of this Lease immediately prior to such Casualty Occurrence as certified by an senior officer of Lessee and in the event that 10 or more Units are replaced with such Replacement Units, Lessee shall provide to Lessor a senior officer's certificate confirming the matters listed in subsections (a), (b) and (c) of this section 11.4 together with a desktop appraisal by a qualified third party appraiser confirming the matters listed in this subsection (d).

At its own cost and expense, Lessee shall, prior to or concurrently with such replacement:

- (a) furnish Lessor with a full warranty bill of sale conveying to Lessor title to the Replacement Unit;
- (b) deliver to Lessor for execution, a Lease Supplement duly executed by Lessee, subjecting such Replacement Unit to this Lease; and
- (c) upon such execution and redelivery of such Lease Supplement to Lessee, Lessee shall cause such searches to be made in respect of Liens against the Replacement Unit, and such additional filings to be made as are necessary or appropriate to perfect the right, title and interest of Lessor and the Indenture Trustee in such Replacement Unit, which shall include: (A) filing the same with the Board pursuant to 49 U.S.C. § 11301, as amended, (B) depositing the same with the Registrar General of Canada and causing notice of such deposit to be forthwith given in The Canada Gazette, each pursuant to Section 105(1) of the *Canada Transportation Act*, (C) filing a financing statement pursuant to any applicable *Personal Property Security Act* or equivalent legislation in the jurisdictions where the Lessee and Lessor maintain their chief executive offices, and,
- (d) should ten (10) Units be replaced pursuant to this Section by Replacement Units and for each five (5) Units replaced by Replacement Units thereafter, Lessee shall deliver to Lessor and the Indenture Trustee an opinion of Lessee's Counsel reasonably satisfactory to Lessor and the Indenture Trustee as to such searches, deposit, notice or registration in respect of such Replacement Units.

For all purposes of this Lease, upon full compliance with the terms of this Section 11.4 and passage of title in such Replacement Unit to Lessor, (1) such Replacement Unit shall be deemed to be part of the Leased Equipment and shall be deemed to be a Unit, (2) with respect to the Unit which has suffered the Casualty Occurrence (as is being replaced by such Replacement Unit), (a) Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to such Units and, upon request, or upon the order of, Lessee, execute and deliver to Lessee, a bill of sale for such Unit (without warranties other than as to the absence of Lessor Liens) and (b) Lessee shall own such Unit free and clear of all Lessor Liens and shall have the unrestricted right to dispose of such Unit and retain any amounts arising from such disposition.

11.5 Allocation of Proceeds. Payments on account of a Casualty Occurrence with respect to any Unit received by Lessor, Lessee or any sublessee other than proceeds from insurance maintained by Lessee shall be applied as follows:

- (a) **Purchase of Unit.** If Lessee has elected to purchase such Unit pursuant to Section 11.3, such payments shall be paid: first, to Lessor in payment of the portion, if any, of the amounts due from Lessee pursuant to Section 11.3 that remain unpaid; second, to Lessee in reimbursement of the portion, if any, of the amounts due from Lessee pursuant to Section 11.3 that have been paid; and third, twenty-five percent (25%) of any remaining amount to Lessor and seventy-five percent (75%) of any remaining amount to Lessee; provided, however, that if a Default or an Event of Default has occurred and is continuing, the full amount of such payment remaining after the application thereof pursuant to the first clause of this Section 11.5(a) shall be paid to Lessor, to be held as security for the performance by Lessee of its obligations under this Lease, and shall be promptly applied pursuant to the second and third clauses of this Section 11.5(a) when such Default or Event of Default is no longer continuing; and
- (b) **Replacement of Unit.** If Lessee has elected to replace such Unit pursuant to Section 11.4, such payments, including, without limitation, any third party payment paid upon a Casualty Occurrence, shall be retained by Lessor and, so long as no Default or Event of Default has occurred and is continuing (in which event, such amount shall be retained by Lessor to be held as security for the performance by Lessee of its obligations under this Lease and, shall be promptly applied pursuant to the clause of this sentence following this parenthetical when such Default or Event of Default is no longer continuing), paid over to Lessee upon receipt by Lessor of a certificate of a Responsible Officer of Lessee to the effect that such Unit has been replaced in compliance with Section 11.4.

12. Disclaimer of Warranties and Representations

LESSEE ACKNOWLEDGES THAT (a) EACH UNIT IS OF THE DESIGN AND MANUFACTURE SELECTED BY LESSEE, (b) EACH UNIT IS SUITABLE FOR LESSEE'S PURPOSES AND (c) NONE OF THE LESSOR, THE INDENTURE TRUSTEE OR ANY NOTEHOLDER IS A MANUFACTURER OR DEALER IN SUCH PROPERTY. LESSEE ACKNOWLEDGES THAT LESSOR LEASES THE LEASED EQUIPMENT "AS IS", "WHERE IS", "WITH ALL FAULTS", IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, BY LESSOR, AND LESSOR EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO (i) THE DESIGN, OPERATION OR CONDITION OF THE UNITS, (ii) THE VALUE OR MERCHANTABILITY OF THE UNITS, (iii) THE FITNESS OF THE UNITS FOR ANY PARTICULAR USE OR PURPOSE, (iv) THE COMPLIANCE OF ANY UNIT (OR PART THEREOF) WITH ANY APPLICABLE LAWS, (v) LESSOR'S TITLE TO ANY UNIT, OR (vi) ANY OTHER MATTER WHATSOEVER WITH RESPECT TO ANY UNIT, IT BEING AGREED THAT ALL SUCH RISKS, AS AMONG THE LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. Notwithstanding the foregoing, Lessor hereby represents and warrants that on the Closing Date, (A) Lessor shall have received whatever rights, title and interests in the Units being delivered on the Closing Date as are conveyed to it by Lessee and (B) each such Unit shall be free of Lessor Liens. Lessee agrees that the only other guarantees or warranties made with respect to any such Unit are those made by the Manufacturer thereof and Lessee and Lessor agree that they shall cooperate at Lessee's sole expense in enforcing such guarantees and warranties when such action is necessary. So long as no Default or Event of Default has occurred and is continuing, Lessor hereby assigns to Lessee, for and during the term of this Lease, any applicable Manufacturer warranty issued on or applicable to any such Unit and Lessor hereby authorizes Lessee during the term of this Lease to obtain, at Lessee's sole expense, any and all services, warranties or amounts to be used to repair any such Unit (and such amounts shall be used by Lessee to repair such Unit) furnished in connection therewith by Manufacturer; provided, however, that at any time that a Default or an Event of Default has occurred and is continuing, Lessor may terminate such authority and assignment and may assert and enforce, at Lessee's sole expense, such claims and rights.

13. Identification Marks

Lessee shall cause each Unit to be kept numbered with the identification number set forth in Schedule A. Lessee shall not change the identification number of any Unit unless and until (a) a statement of new number or numbers to be substituted therefor has been delivered to Lessor and the Indenture Trustee and filed and deposited by Lessee in all public offices where this Lease or a memorandum thereof respecting such Unit has been filed and deposited and (b), provided the identification number on ten (10) or more Units has been changed, Lessee has furnished Lessor and the Indenture Trustee an opinion of counsel with respect to same. The Units may be lettered with the names or initials or other insignia customarily used by

Lessee or any Affiliates. Except as provided herein, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

14. Liens, Encumbrances and Rights of Others

Lessee shall not directly or indirectly create, incur, assume or suffer to exist any Lien whatsoever on or with respect to this Lease, any of the Leased Equipment, title thereto or any interest therein except Permitted Liens. Notwithstanding the foregoing, upon the occurrence of a Terminating Lien Event, Lessee shall terminate the Lease and purchase the Leased Equipment from Lessor in accordance with the provisions set forth in section 10.1 hereof. Lessee will promptly notify Lessor in writing of any Lien or right of others which arises and is not excepted above at any time on or with respect to this Lease, any of the Leased Equipment, title thereto or any interest therein and will promptly, at Lessee's expense, cause any of the same to be bonded (in an amount and by Persons reasonably satisfactory to Lessor) or duly discharged, dismissed or removed as soon as possible, but in any event within fifteen (15) days after the existence of the same first becomes known to Lessee.

15. Notices

15.1 Of Particular Events. Lessee shall promptly notify Lessor and, for so long as the Indenture shall be in effect, Indenture Trustee in writing:

- (a) of the amount of any delinquent Taxes assessed or charged to Lessor, Lessee or any sublessee or assignee under any law now or hereafter in force, of which Lessee has had notice, that may reasonably subject any of the Leased Equipment to the hazard of seizure or lien;
- (b) of any material claim, demand, action or dispute that involves the rights of Lessor, Lessee or any sublessee or assignee hereunder, or that involves the interpretation of any of the provisions of this Lease that directly or indirectly affects the Tax or other liability or rights of either Lessor, Lessee or any sublessee or assignee, in each case of which Lessee has had notice;
- (c) within fifteen (15) days from the date of notice thereof of any claim or legal proceeding alleging that Lessor or Indenture Trustee or any Noteholder is liable in any amount or alleging that Lessee is liable in an amount reasonably expected to be in excess of \$5,000,000 as a result of any accident in which it is alleged that any of the Leased Equipment is directly or indirectly involved; and
- (d) within five (5) days from the date Lessee has actual knowledge thereof of any incident involving any of the Leased Equipment in which there occurs a discharge, dispersal, release or escape of pollutants into or upon land or other

real estate, the atmosphere, any water course or body of water, whether above or below the ground, or otherwise into the environment that has resulted or may result in the requirement that Lessee report such incident to any governmental agency.

- 15.2 Procedures.** All notices herein required (a) shall be given no later than the date required hereunder, (b) shall be signed by an appropriate officer or other representative, (c) shall be addressed as provided below and (d) shall be considered as properly given (i) if delivered in person, (ii) if sent by a nationally recognized overnight delivery service, (iii) if overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, and registered or certified with return receipt requested or (iv) if sent by facsimile copy and receipt thereof confirmed. Notice so given shall be effective upon receipt by the addressee, provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any failure to give or deliver a copy of any notice shall not invalidate or otherwise prejudicially affect any action or proceeding founded on such notice. For the purposes of notice, the addresses of the parties shall be as set forth below or at such other address at such parties shall advise in writing to the other parties from time to time:

Lessor: GE Capital Railcar Services Canada Company
Suite 2401, 421-7th Ave. S.W.
Calgary, Alberta T2P 4K9

Attention: Vice President-Finance
Facsimile No.: 403-531-2864

with a copy to:

GE Capital Railcar Services Canada Inc.
33 West Monroe Street
Chicago, Illinois 60603
USA

Attention: Vice-President, Structured Sales
Facsimile: (312) 853-5023

with an additional copy to:

McCarthy Tetrault
Suite 4700
Toronto Dominion Bank Tower
Toronto Dominion Centre
Toronto, Ontario M5K 1E6

Attention: Managing Partner
Facsimile: (416) 868-1862

Lessee: NOVA Chemicals Ltd.
645 - 7th Avenue S.W., 23rd Floor
Calgary, Alberta T2P 4G8

Attention: Treasurer
Facsimile: (403) 750-4828

with a copy to: NOVA Chemicals Ltd.
645 - 7th Avenue S.W., 23rd Floor
Calgary, Alberta T2P 4G8

Attention: Corporate Secretary
Facsimile: (403) 750-4374

with an additional copy to:

Osler, Hoskin & Harcourt
P.O. Box 50
1 First Canadian Place
Toronto, Ontario M5X 1B8

Attention: Managing Partner
Facsimile: (416) 862-6666

Indenture Trustee:

Montreal Trust Company of Canada
151 Front Street West
Suite 605
Toronto, Ontario M5J 2N1

Attention: Manager, Client Services, Corporate
Trust Services

Facsimile: (416) 981-9777

16. Return of Leased Equipment

16.1 Return and Storage. At the end of the Term for any Unit, if Lessee does not exercise its purchase or renewal option under Section 6 with respect to such Unit, Lessee shall either, as directed by Lessor by notice to Lessee not less than sixty (60) days prior to the end of such Term, (i) at Lessee's sole cost and expense and as designated by Lessor in such notice, deliver possession of such Unit to Lessor on or prior to the end of such Term (a) provided no Default or Event of Default has occurred and is continuing, at one of Lessee's plant sites in Canada designated by Lessor, or (b) if a Default or an Event of Default has occurred and is continuing, at a location designated by Lessor, within 50 km of one of Lessee's plant sites in Canada (each of (a) or (b) being a "Redelivery Site") , or (ii) put such Unit in storage on behalf of Lessor and deliver possession of such Unit to Lessor at the designated Redelivery Site at the end of such storage period. If Lessor elects to store such Unit, Lessee shall, at its own cost and expense, store such Unit for a period not exceeding sixty (60) days after the end of such Term, during which period each such Unit shall be at the sole risk of Lessee in the same manner as pursuant to the terms of this Lease. Upon not less than thirty (30) days' prior written notice from Lessor, Lessee shall deliver possession of a stored Unit to Lessor at its designated Redelivery Site. Lessee shall not be obligated to move any such Unit out of storage more than once at the request of Lessor. During any such storage period, Lessee will permit Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same, accompanied by a representative of Lessee; provided, however , that Lessee shall not be liable, except in the case of its negligence or willful misconduct, for any injury to, or the death of, any Person exercising, either on behalf of Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence and provided further that any inspection is conducted in a manner consistent with the Lessee's safety guidelines and standards.

- 16.2 Condition.** Upon the return of any Unit of Leased Equipment pursuant to Section 16.1, Lessee covenants that such Unit shall be maintained and returned (i) in a condition that would not otherwise constitute a "cause for attention or renewal" as defined in Section "A" of each rule in the Field Manual of the A.A.R. then in effect; (ii) without any A.A.R. Interchange Rule 95 damage; (iii) free of running repairs as defined in the A.A.R. Interchange Rules; (iv) in compliance with any governmental or industry agency having authority over the use of the Units, repair requirements, modifications, inspection and reporting; and (v) suitable for the immediate loading, transporting and unloading of "plastic pellets".
- 16.3 Holdover Rent.** If, despite its best efforts, Lessee is unable to return a Unit, Lessee shall pay to Lessor, as liquidated damages and not as a penalty, for each day that a Unit is not returned to Lessor or put into storage at the expiration of the Term as provided in Section 16. 1, holdover rent in an amount equal to 125% of the daily equivalent of the average Basic Rent applicable to such Unit during the most recently expired term. The provision for such payment shall not abrogate the Lessor's right under this Section 16 to have such Unit returned to it hereunder.
- 16.4 Nondelivery.** If, despite its best efforts, the Lessee is unable to return any Unit to Lessor or deliver such Unit into storage within ninety (90) days after expiration of the Term for such Unit, Lessee shall have the right to replace such non-delivered Unit with a Replacement Unit, which Replacement Unit shall conform to the requirements set forth in section 11.4 hereof. Should Lessee not replace a non-delivered Unit with a Replacement Unit as set forth above, Lessee shall indemnify and hold Lessor harmless for all losses or damages Lessor may suffer as a result of Lessee's failure to deliver such Units to Lessor on the expiration of the Term.
- 16.5 Lessor Appointed as Lessee's Agent.** Without in any way limiting the obligations of Lessee under the foregoing provisions of this Section 16, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor pursuant to Section 16.1, to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be at the time in possession of such Unit.

17. Events of Default

17.1 Events of Default

The following events shall constitute Events of Default hereunder:

- (a) Lessee fails to make any payment of Basic Rent within five (5) Business Days after such payment is due; or

- (b) Lessee fails to make any payment of Stipulated Loss Value, Termination Value, Early Purchase Option Price, Fair Market Value or Fair Market Rental Value within ten (10) days after such payment is due; or
- (c) Lessee fails to make any other payment of Supplemental Rent within ten (10) days after written notice to Lessee that such payment is overdue; or
- (d) Lessee fails after receiving written notice from Lessor to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under any other Operative Agreement and such failure continues unremedied for a period of thirty (30) days; or
- (e) Any representation or warranty that is made herein or in any other Operative Agreement by Lessee, or in any certificate furnished to any of the Lessor, the Indenture Trustee or the Noteholders in connection herewith or therewith, proves to be incorrect when given or made; or
- (f) if Lessee shall:
 - (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets;
 - (ii) be unable, or admit in writing its inability or failure, to pay its debts generally as they become due;
 - (iii) make a general assignment for the benefit of creditors;
 - (iv) commit an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada);
 - (v) commence any cause, proceeding or other action under any existing or future law relating to bankruptcy, insolvency, reorganization or relief of debtors seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or an arrangement with creditors or taking advantage of any insolvency law or proceeding for the relief of debtors, or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or
 - (vi) take corporate action for the purpose of effecting any of the foregoing;

- (g) if any cause, proceeding or other action shall be instituted in any court of competent jurisdiction, against Lessee, seeking in respect of Lessee an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or the like of Lessee or of all or any substantial part of its assets, or any other like relief in respect of Lessee under any bankruptcy or insolvency law and;
 - (i) such cause, proceeding or other action results in an entry of an order for relief or any such adjudication or appointment; or
 - (ii) if such cause, proceeding or other action is being contested by Lessee in good faith, the same shall continue undismissed, or unstayed and in effect, for any period of sixty (60) consecutive days;
- (h) a distress, seizure, execution, attachment, garnishment or enforcement is levied or made with respect to the Leased Equipment having an aggregate fair market value in excess of five million dollars (\$5,000,000) except where
 - (i) such proceeding or action is being contested or remedied in good faith by Lessee and the Lessee has provided evidence in respect thereof, (ii) there is no material risk of sale or forfeiture of the Leased Equipment, and (iii) such event shall not have continued unremedied for more than sixty (60) days; or
- (i) except in the case of the suspension of business due to a labour dispute or other matter beyond Lessee's control, if Lessee suspends or ceases or threatens in writing or by any formal announcement to suspend or cease to carry on its business.

17.2 Lessor Events of Default. The following events shall constitute Lessor Events of Default hereunder:

- (a) provided no Event of Default shall have occurred and be continuing, Lessor materially interferes with Lessee's quiet enjoyment of the Leased Equipment as set forth in Section 20 of this Lease; or
- (b) Lessor fails to transfer title to the relevant Units on the relevant date if Lessee purchases such Units by exercising its Purchase Option, its voluntary termination rights under section 4.2, in the event of a Terminating Lien or Casualty Occurrence or in any other circumstance set forth in this Lease, provided in each such case that Lessee has paid the Purchase Option price, Stipulated Loss Value or Termination Value, as applicable, plus any other amounts owing hereunder, if any, in full; or

- (c) if Lessor shall:
 - (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets;
 - (ii) be unable, or admit in writing its inability or failure, to pay its debts generally as they become due;
 - (iii) make a general assignment for the benefit of creditors;
 - (iv) commit an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada);
 - (v) commence any cause, proceeding or other action under any existing or future law relating to bankruptcy, insolvency, reorganization or relief of debtors seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or an arrangement with creditors or taking advantage of any insolvency law or proceeding for the relief of debtors, or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or
 - (vi) take corporate action for the purpose of effecting any of the foregoing;
- (d) if any cause, proceeding or other action shall be instituted in any court of competent jurisdiction, against Lessor, seeking in respect of Lessor an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or the like of Lessor or of all or any substantial part of its assets, or any other like relief in respect of Lessor under any bankruptcy or insolvency law and;
 - (i) such cause, proceeding or other action results in an entry of an order for relief or any such adjudication or appointment; or
 - (ii) if such cause, proceeding or other action is being contested by Lessor in good faith, the same shall continue undismissed, or unstayed and in effect, for any period of sixty (60) consecutive days;

18. Remedies

18.1 Generally. If at any time an Event of Default has occurred and is continuing, Lessor may, at its option, declare this Lease to be in default, and at any time thereafter Lessor may do one or more of the following with respect to any Unit as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with, any mandatory requirements of applicable law then in effect:

- (a) Lessor may proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable legal fees and disbursements.
- (b) Lessor may, by notice in writing to Lessee, with or without terminating this Lease, terminate all rights of Lessee to the use of the Leased Equipment, but Lessee shall remain liable as herein provided; and thereupon, at Lessee's sole cost and expense, Lessee shall promptly return the Leased Equipment to Lessor at the location(s), in the condition and otherwise in accordance with all of the terms of Section 9 and Section 16, or Lessor, at its option, may enter upon the premises where the Leased Equipment is located, and take immediate possession of and remove the Leased Equipment by summary proceedings or otherwise, all without Lessor having any liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by and reasonably necessary to such taking or otherwise.
- (c) With or without taking possession thereof, Lessor may sell any Unit or the Leased Equipment at public or private sale, with notice to Lessee but with or without advertisement as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Leased Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto.
- (d) Whether or not Lessor has exercised any of its rights under paragraph (a), (b) or (c) above, require Lessee to pay the Stipulated Loss Value, any unpaid Basic Rent accrued to and excluding the date of payment and all Supplemental Rent and all other amounts then due hereunder.

18.2 Enforcement Expenses. In addition, Lessee shall be liable for any and all unpaid Supplemental Rent due hereunder before, after or during the exercise of any of the foregoing remedies and for all reasonable legal fees and expenses and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred

in connection with the return of any Unit in accordance with the terms hereof, the sale of any Unit as provided in Section 18.1(c) or the placing of such Unit in the condition required hereunder.

18.3 Waivers by Lessor. Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not constitute a waiver of any other default. Failure by Lessor to collect the Rent reserved herein or any other sums as and when the same fall due, or to exercise its right to take possession of the Leased Equipment as herein provided, shall not waive or in any way affect Lessor's rights under this Lease or extend the time for making said payments. None of the conditions or provisions of this Lease shall be held to have been waived by any act or knowledge of Lessor, its agents or employees, but only by an instrument in writing signed by an officer of Lessor and delivered to Lessee.

18.4 Lessee Remedies. If no Event of Default shall have occurred and be continuing, upon the occurrence of a Lessor Event of Default, Lessee may, at its option (i) terminate the Lease and pay the Termination Value and all Supplemental Rent and all other amounts due and owing hereunder or (ii) Lessee may proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessor of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable legal fees and disbursements.

18.5 Remedies Unrestricted. Except as otherwise expressly provided above, no remedy referred to in this Section 18 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor or Lessee, as the case may be, at law or in equity. The exercise or beginning of exercise by Lessor or Lessee, as applicable, of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor or Lessee, as applicable, of any or all such other remedies. To the extent permitted by Applicable Law, Lessee or Lessor, as applicable, hereby waive any rights now or hereafter conferred by statute or otherwise which may require Lessor or Lessee, as the case may be, to initiate any judicial proceedings in connection with the Leased Equipment or, in the case of Lessor, to give any notice or to sell, lease or otherwise use any Unit in mitigation of Lessor's damages as set forth in this Section 18 or which may otherwise limit or modify any of Lessor's rights or remedies under this Section 18.

19. Refinancing of Notes

The Lessee will have the right to direct the Lessor to refinance the Notes (without reduction of any portion of the outstanding principal amount of any financing provided by such Notes prior to such refinancing) on two (2) occasions during the Term in either the public or private debt markets on terms satisfactory to the Lessee, indemnifying the Lessor for out-of-pocket

costs only, so long as the payments of Rent, Stipulated Loss Values and Termination Values are adjusted to maintain the Lessor's Net Economic Return and the terms and conditions of the Operative Agreements, taken as a whole, are not adversely affected. The Lessee will pay the costs of and derive all benefits from any such refinancing. For greater certainty, any such refinancing shall be conditional upon payment in full of all principal and interest and all other amounts due under the Notes including the Makewhole Amount.

20. Quiet Enjoyment

Lessor covenants that Lessee and its permitted successors and assigns, so long as no Event of Default has occurred and is continuing hereunder, may and shall peaceably and quietly have, hold, possess, use and enjoy the Leased Equipment as provided in this Lease without suit, molestation or interruption by Lessor, by reason of Lessor's acts or by anyone claiming through Lessor except the Indenture Trustee.

21. Further Assurances

Lessee hereby agrees promptly and duly to execute and deliver to Lessor and Indenture Trustee such further documents and assurances and take such further action as the same may from time to time reasonably request in order more effectively to carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favour of Lessor hereunder and Indenture Trustee under the Indenture.

22. Lessor's Right to Perform for Lessee

If Lessee fails to make any payment of Supplemental Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Default Rate, shall be deemed Supplemental Rent, payable by Lessee upon demand. No such payment or performance shall be deemed to waive any default or relieve Lessee of its obligations hereunder.

23. Representations, Warranties and Covenants of Lessee

23.1 Lessee Representations and Warranties. Lessee represents and warrants to Lessor that:

- (a) Lessee is a corporation duly amalgamated and validly subsisting under the laws of the Province of Alberta, is duly qualified to do business in all jurisdictions where failure to do so would have a Material Adverse Effect on Lessee and has corporate power and authority and all necessary licenses and permits to enter into this Lease and to perform its obligations in connection

with the transactions contemplated hereby and thereby and to own or lease its properties and to carry on its business as now conducted and as contemplated hereby.

- (b) This Lease and each other Operative Agreement to which Lessee is a party has been duly authorized, executed and delivered by Lessee and constitutes the legal, valid and binding obligations of Lessee enforceable against it in accordance with its terms subject to bankruptcy, insolvency, preference, moratorium and other similar laws affecting creditors' rights generally and the discretion of the courts with respect to equitable or discretionary remedies and defences.
- (c) No consent, approval, authorization or order of, giving of notice to or registration with, or taking any other action in respect of any governmental authority is necessary for the execution, delivery or performance by Lessee of this Lease or any other Operative Agreement to which Lessee is a party or for the use and maintenance of the Leased Equipment.
- (d) Neither the execution, delivery or performance by Lessee of this Lease and each other Operative Agreement to which Lessee is a party, nor compliance with the terms and provisions thereof, conflicts or will conflict with, or will result in a breach or violation of, any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents or bylaws, as amended, of Lessee or any order, writ, injunction or decree of any court or governmental authority against Lessee or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Lessee is a party or by which it or any of its properties is bound or constitutes or will constitute a default thereunder or will result in the imposition of any Lien upon any of its properties other than as contemplated by the Lease, in each such case in a manner which could reasonably be expected to have a Material Adverse Effect on Lessee or a material adverse effect on the Leased Equipment.
- (e) Lessee is in compliance with Applicable Laws, other than such laws, rules or regulations (i) the validity or applicability of which Lessee is contesting in good faith or (ii) the failure to comply with which could not reasonably be expected to have a Material Adverse Effect on Lessee or material adverse effect on the Leased Equipment.
- (f) Except as described in the financial statements of Lessee, there are no suits or proceedings pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other administrative governmental agency against Lessee which could, if adversely determined (to the extent not covered by insurance), reasonably be expected to have a

Material Adverse Effect on Lessee or material adverse effect on the Leased Equipment.

- (g) Neither the Lease, financial statements of Lessee nor any document or certificate, furnished or to be furnished to Lessor by or on behalf of Lessee pursuant here to or in connection herewith, contains or will contain, as of its respective date, any untrue statement of a material fact or omits or will omit to state, as of its respective date, a material fact regarding Lessee, the Units or any other matters discussed therein necessary in order to make the statements contained herein and therein regarding such matters not misleading. There are no facts known to Lessee which, individually or in the aggregate, are reasonably likely to have a Material Adverse Effect on Lessee or a material adverse effect on the Leased Equipment, which facts have not been disclosed herein or in the financial statements of Lessee.
- (h) No broker's or finder's fees or commissions or management or advisory fees are, will or may become payable arising out of any actions or omissions to act on Lessee's part in connection with the transactions contemplated by the Lease or related document other than those payable to Lessee Advisor. Lessee has not, directly or indirectly, used the services of any broker, agent or finder in regard to any of the transactions contemplated hereby other than Lessee Advisor.
- (i) On or before the Closing Date, good and marketable title to each Unit, in each case immediately upon delivery of such Unit under a Bill of Sale, will be validly vested in Lessor, free of all Liens and Lessee shall have caused such filings to be made as are necessary or appropriate to perfect the right, title and interest of Lessor and the Indenture Trustee in this Lease and any Lease Supplement, the Indenture and any supplement to the Indenture including (a) registration in Alberta pursuant to the PPSA, (b) depositing a copy of the Lease and Lease Supplement, the Indenture and any supplement to the Indenture with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 105 of the *Canada Transportation Act*, and (c) depositing a copy of the Lease and Lease Supplement, the Indenture and any supplement to the Indenture with the Board.
- (j) None of the information provided by Lessee to the Appraiser in writing in connection with the Appraisal contains or will contain, as of its date and as of the Closing Date, any untrue statement of a material fact regarding any Unit or will omit to state, as of its date and as of the Closing Date, a material fact regarding any Unit necessary in order to make such information regarding any such Unit not misleading; provided however, that Lessee makes no other

representation or warranty as to the Appraisal or the conclusions of the Appraiser therein.

- (k) No Default, Event of Default or Casualty Occurrence and no event which with the giving of notice or passage of time, or both, could become a Casualty Occurrence, has occurred and is continuing.
- (l) Lessee has timely filed all material tax returns and other filings required by Tax Laws to be filed by it and has paid all Taxes due pursuant to such returns or pursuant to any assessment made against Lessee or any of its assets, and all other material Taxes, fees or other charges imposed on Lessee by any governmental authority, including required instalments on account of Taxes (other than Taxes, fees or other charges the payment of which is being contested in good faith by Lessee). No tax liens have been filed and no claims are being asserted with respect to any Taxes, fees or other charges which could reasonably be expected to have a Material Adverse Effect on Lessee. Adequate reserves have been provided on the books of Lessee in respect of all taxes or other governmental charges being contested in good faith by Lessee to the extent required under GAAP.
- (m) The chief executive office and principal place of business of Lessee is located in Calgary, Alberta.
- (n) The use of any of the Units as contemplated by Lessee does not violate any Applicable Law, including any environmental laws.

23.2 Lessee Covenants. During the Term, Lessee covenants and agrees that:

- (a) Lessee will furnish to the Lessor promptly after the occurrence of any Event of Default or a Responsible Officer becoming aware of a Default, a written notice specifying the nature of such Event of Default or Default and what action the Lessee is taking or proposes to take with respect thereto;
- (b) Lessee will maintain its corporate existence;
- (c) Lessee will comply with all Applicable Laws if the failure to so comply would have a Material Adverse Effect on the Lessee or material adverse effect on the Leased Equipment;
- (d) Lessee will not create or incur, or suffer to exist, nor will it permit the creation or incurring nor suffering to exist of, any Lien on the Leased Equipment or the insurances except Permitted Liens (including all benefits thereto, including claims and returns of premiums) maintained from time to time on the Leased Equipment nor will the Lessee create or incur or suffer to

exist any Lien on Lessor's interest in the Leased Equipment or the insurances (including all benefits thereto, including claims and returns of premiums) maintained from time to time on the Leased Equipment (other than Permitted Lessor Liens) ;

- (e) Lessee shall furnish to the Lessor, the Indenture Trustee and the Noteholders (excluding any assignees or transferees of the Noteholders):
 - (i) within sixty (60) days after the end of each financial quarter of Lessee, the unaudited consolidated balance sheet of the Lessee as of the end of such financial quarter, together with the related statements of income and surplus and changes in financial position for such financial quarter, each prepared in accordance with GAAP;
 - (ii) within one hundred and forty (140) days after the end of each financial year of the Lessee, an audited consolidated balance sheet of Lessee as at the end of such financial year, together with the related audited statements of income and surplus and changes in financial position for such financial year prepared in accordance with GAAP and an audit opinion of an independent firm of chartered accountants;
 - (iii) with reasonable promptness, provide such other reports and information on the financial condition and business affairs and operations of Lessee as Lessor may reasonably request from time to time and which Lessee is not required by contract with a third party to keep confidential;
 - (iv) notice of change of location of Lessee's chief executive office within fifteen (15) days of such change; and
 - (v) notice of change of Lessee's name other than the change of Lessee's name to NOVA Chemicals Corporation as part of a proposed amalgamation to be effective as at January 1, 1999 within fifteen (15) days of such change;

provided, with respect to (iii) above only, Lessor hereby agrees to keep confidential any data or information delivered to Lessor under this section which is not publicly available, subject to the terms of the Confidentiality Agreement previously executed by the parties and attached as Schedule H hereto (and subject to the sharing of any such information with the Indenture Trustee and the Noteholders);

- (f) Lessee shall make such additional filings as are necessary to maintain the perfection and priority of the Lessor's and the Indenture Trustee's interest in

the Leased Equipment. Notwithstanding the foregoing, Lessor acknowledges that it shall be responsible for the preparation, filing and cost of any filings which are required to be made, in connection with its proposed amalgamation with GE Capital Railcar Services Canada Inc. and any other amalgamations, mergers or other corporate changes (including, without limitation, relocation of its chief place of business) which would require additional filings to be made to maintain the perfection and priority of Lessor's and the Indenture Trustee's interest in the Leased Equipment;

- (g) the Lessee shall pay or cause to be paid all rents, Taxes, rates, levies and assessments, ordinary or extraordinary, government fees, dues and other governmental obligations to pay money validly levied, assessed or imposed upon the Lessee and any part of its properties which are material to the Lessee taken as a whole, as and when the same become due and payable, except to the extent and for so long as the Lessee shall contest in good faith its obligation to do so diligently in appropriate proceedings, provided that in such case the Lessee shall provide adequate reserves (to the extent required under GAAP) for the payment of any such obligation being contested and provide reasonable satisfaction to the Lessor that any such contestation will not have a Material Adverse Effect;
- (h) the Lessee shall:
 - (i) carry on and conduct its business in the ordinary course; and
 - (ii) maintain its property in good working order and condition and repair, use and operate its property in accordance with normal industry practice;

except that nothing contained in this section shall prevent Lessee from selling, leasing or otherwise disposing of any of its property in the ordinary course of business, subject to the terms of this Lease;

- (i) Lessee shall keep proper books of record and account in which complete and correct entries will be made of its transactions sufficient to enable it to prepare its financial statements in accordance with GAAP;
- (j) Lessee shall not consolidate or amalgamate with or merge into any other corporation or other body or convey, transfer or lease its properties and assets substantially as an entirety to any other Person (the "Transactions"), unless,
 - (i) the entity formed by such Transactions or the Person which shall have acquired or leased such properties or assets shall be a corporation, partnership or trust organized under the laws of Canada or any

province or territory thereof (a "New Canadian Entity") or the United States, any state thereof or the District of Columbia (a "New U.S. Entity"), and shall expressly assume Lessee's obligation for the due and punctual payment of the Rent and the performance and observance of every covenant of the Lease and the Operative Agreements to which it is a party on the part of the Lessee to be performed or observed;

- (ii) immediately after giving effect to such transaction, no Event of Default or event that after giving notice or passage of time or both would be an Event of Default shall have occurred and be continuing; and
- (iii) Lessee shall provide Lessor and the Indenture Trustee notice of such Transaction thirty (30) days prior to the closing date of same; and
- (iv) if the New Canadian Entity or the New U.S. Entity, having complied with the provisions of this subsection:
 - (1) is assigned a credit rating by Standard and Poors or Moodys rating agencies which is lower than the credit rating assigned to Lessee prior to the Transactions, or
 - (2) if such Transaction would result in adverse consequences to the Lessor or the Noteholders including, but not limited to, the levy of withholding tax on Rent;

provided such consequences are not expressly accepted by Lessor and the Noteholders in writing, Lessee shall (i) in the case of a credit rating lowering referenced in clause (1) of this subsection (iv), prior to such Transaction, purchase all of the Leased Equipment at a purchase price equal to the Termination Value at the time of the closing of such intended Transaction, plus all other amounts accrued or owing hereunder or (ii) in the case of an indemnifiable adverse consequence referenced in clause (2) of this subsection (iv), at Lessee's option either indemnify Lessor and the Noteholders for such consequences arising solely from such Transaction, or purchase all of the Leased Equipment on the same terms as are set out in (i) above. If the credit rating referenced in clause (1) of this subsection (iv) is a split rating, Lessor and the Noteholders shall use the higher rating assigned to such New Canadian Entity or New U.S. Entity, as the case may be.

24. Representations, Warranties and Covenants of Lessor

24.1 Representations and Warranties of Lessor. Lessor represents and warrants to Lessee that:

- (a) Lessor is an unlimited liability company duly organized, validly existing and in good standing under the laws of the Province of Nova Scotia, is duly qualified to do business in all jurisdictions where failure to do so would have a Material Adverse Effect on Lessor and has corporate power and authority and all necessary licenses and permits to enter into this Lease and to perform its obligations in connection with the transactions contemplated hereby and thereby and to own or lease its properties and to carry on its business as now conducted and as contemplated hereby;
- (b) The Lease has been duly authorized, executed and delivered by Lessor and constitutes the legal, valid and binding obligations of Lessor enforceable against it in accordance with its terms;
- (c) No consent, approval, authorization or order of, giving of notice to or taking any other action in respect of any governmental authority is necessary for the execution, delivery or performance by Lessor of the Lease;
- (d) Neither the execution, delivery or performance by Lessor of the Lease, nor compliance with the terms and provisions thereof, conflicts or will conflict with, or will result in a breach or violation of, any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents or bylaws, as amended, of Lessor or any order, writ, injunction or decree of any court or governmental authority against Lessor or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Lessor is a party or by which it or any of its properties is bound or constitutes or will constitute a default thereunder or will result in the imposition of any Lien upon any of its properties other than as contemplated by the Lease, in each such case in a manner which could reasonably be expected to have a Material Adverse Effect on Lessor;
- (e) Lessor is in compliance with Applicable Laws, other than such laws, rules or regulations (i) the validity or applicability of which Lessor is contesting in good faith or (ii) the failure to comply with which could not reasonably be expected to have a Material Adverse Effect on Lessor;
- (f) Except as described in the financial statements of Lessor, there are no suits or proceedings pending or, to the knowledge of Lessor, threatened in any court or before any regulatory commission, board or other administrative governmental agency against Lessor which could, if adversely determined (to

the extent not covered by insurance), reasonably be expected to have a Material Adverse Effect on Lessor.

24.2 Covenants of Lessor. The Lessor covenants and agrees that:

- (a) unless and until such time as an Event of Default shall have occurred and be continuing and the Term has been terminated in accordance with the provisions hereof, Lessor shall not interfere with or deprive the Lessee or any permitted sublessee of peaceful and quiet enjoyment of and the continuing possession, use and operation of the Leased Equipment during the Term;
- (b) Lessor shall maintain its existence and remain a resident of Canada for purposes of the Tax Act;
- (c) Lessor will not create or incur nor will it permit the creation or incurring of a Lessor Lien on the Leased Equipment except for Permitted Lessor Liens;
- (d) Lessor shall convey to Lessee title to the applicable Units, free and clear of all Lessor Liens, on an "as is, where is" basis in the event that Lessee exercises its Purchase Option; and
- (e) the Lessor shall, at the request of the Lessee, cooperate with the Lessee and do all things reasonably necessary to assist the Lessee in maintaining the perfection and priority of the Lessor's and the Indenture Trustee's interests in the Leased Equipment.

25. Transfers/Assignments as Security

25.1 Transfers. The Lessor may at any time and from time to time without the prior consent of the Lessee transfer all or any portion of its rights and obligations under this Lease to (i) any Affiliate of the Lessor which is a resident of Canada for purposes of the Tax Act or (ii) any Canadian Financial Institution, by executing and delivering to the Lessee a Notice of Transfer setting out the effective date of transfer and upon such date such Affiliate of the Lessor or Canadian Financial Institution shall become a Lessor under this Lease to the extent of the percentage set out in such Notice of Transfer, and the obligation of the Lessor making the assignment will be reduced to the extent of that percentage.

25.2 Restrictions on Assignment. The Lessor shall not, without prior written consent of the Lessee, which consent may be unreasonably withheld, make any more than two (2) transfers to any Person other than an Affiliate of the Lessor and in no event shall the number of Lessors at any time exceed three (3) Persons including Affiliates of the Lessor.

25.3 Limitation on Liability. The Lessor shall pay all costs (including the Lessee's costs) in connection with a transfer. No such transfer shall in any way increase the amount of liability that the Lessee may be exposed to as a result of an indemnified loss or otherwise over the amount of liability that would have been incurred had such transfer not occurred.

25.4 Conditions of any Transfer. In connection with any transfer of its interest in the Lease, the Lessor agrees to the following:

- (a) the transferee shall not, nor shall any of its Affiliates, (A) be a party to any litigation or arbitration (whether as a plaintiff or a defendant) with the Lessee or any of Lessee's Affiliates, except in relation to this Lease or (B) have commenced and be continuing an unsolicited tender offer for the equity securities of Lessee or an Affiliate of Lessee or (C) be a competitor of Lessee in the chemical business or other business which is currently conducted by Lessee.
- (b) any such transfer shall be subject to, and shall be effected in accordance with, the terms and provisions of this Lease;
- (c) the Lessor shall give notice of any such transfer and the intended transferee to the Lessee at least ten (10) Business Days prior to the effective date of such transfer. At the request of Lessee acting reasonably, the Lessor shall provide such additional information as may be reasonably required to demonstrate compliance with this Section 25;
- (d) the Lessor and the transferee shall provide the Lessee with a Notice of Transfer substantially in the form of Schedule G hereto whereby such transferee confirms that it shall be deemed a party to this Lease and agrees to be bound by all the terms of, and to undertake all of the obligations and liabilities of, the Lessor contained in this Lease from and after the effective date of such transfer and in which the transferee shall make representations and warranties comparable to those of the Lessor contained herein; and
- (e) the transferee shall provide an opinion of counsel of such transferee addressed to the Lessee, Lessor and any other Lessors (which counsel shall be reasonably acceptable to the Lessee) confirming (A) the existence, power and authority of, and due authorization, execution and delivery of all relevant documentation by such transferee (with appropriate reliance on certificates of corporate officers or public officers as to matters of fact) and (B) that each agreement in respect of the transfer above is a legal, valid and binding obligation of such transferee, enforceable against such transferee in accordance with the terms hereof and thereof (subject to customary

qualifications, including as to bankruptcy and equitable principles), which opinion shall be in form and substance reasonably satisfactory to the Lessee.

Upon such transfer by the Lessor as provided above, the transferor shall be released from its obligations hereunder to the extent such obligations are expressly assumed by the transferee, and each reference herein to the Lessor shall thereafter be deemed to be a reference to the transferee for all purposes. In no event shall any transfer waive or release the transferor from any liability on account of any breach of any of its representations and warranties, covenants or obligations set forth herein or for any fraudulent or willful misconduct, in each case as to any act, omission or event occurring prior to the date of such transfer.

25.5 Cost and Expenses of Transfer. The Lessor shall pay or reimburse the reasonable and documented out-of-pocket costs and expenses incurred by the Lessee in connection with any transfer contemplated by this Section 25 (including reasonable fees and disbursements of counsel for the Lessee).

25.6 Assignment as Security. The Lessor may, without the prior written consent of the Lessee, assign, by way of security only, its rights under the Lease and the Leased Equipment: (i) as security for repayment of the Notes and other amounts payable under the Indenture; (ii) in other cases, provided the security of the Indenture Trustee is not adversely affected and provided the Lessee's right of quiet enjoyment and ability to obtain title if the purchase option is exercised are not adversely affected. The Lessor will not make any assignment by way of security other than pursuant to the Indenture within twelve (12) months after the Closing Date.

25.7 Limitation on Taxes. No transfer by the Lessor (or of shares of stock or partnership interests of the Lessor) shall cause the Lessee's obligations with respect to Taxes to be greater than such obligations would have been had there not been such a transfer.

25.8 Disclosure. Upon the Lessor obtaining a confidentiality agreement in the form of agreement attached hereto as Schedule H, the Lessor may disclose to any prospective transferee, on a confidential basis, such information concerning the Lessee as it considers appropriate.

26. General Indemnity

26.1 Indemnity. Lessee shall, on an After-Tax Basis, indemnify and hold each Indemnatee harmless from, and defend such Indemnatee against, any and all claims, expenses, losses, demands, damages, penalties, actions, suits, obligations, judgments or liabilities, including reasonable legal fees and expenses, of whatever nature (each a "Claim"), which may be imposed upon, incurred by or asserted against any Indemnatee in any way, arising out of or relating to, or alleged to arise out of or relate to:

- (a) this Lease or any other Operative Agreement to which Lessee is a party or any amendment, supplement, modification or waiver thereof or with respect thereto, or any of the transactions contemplated thereby;
- (b) the Leased Equipment or any portion thereof, or the ownership, possession, use, location (including any location of any Unit in Mexico or lack of enforceability of the Lease in connection with such location in Mexico), lease, sublease, abandonment, acceptance, rejection, nondelivery, delivery, design, manufacture, construction, installation, dismantlement, operation, control, modification, improvement, repair, financing, refinancing, return, nonuse, transfer, purchase, sale or disposition of the Leased Equipment or any Unit or portion thereof, whether or not in compliance with this Lease;
- (c) latent or other defects or deficiencies in the Leased Equipment whether or not discoverable by such Indemnitee or Lessee or infringement of any patent, copyright or other similar right or any claim therefor;
- (d) any violation of law, rule, regulation or order by Lessee or any sublessee or their respective directors, officers, employees, agent or servants or any other applicable law, rule, regulation, ordinance or restriction affecting or applicable to the Leased Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof;
- (e) the use of the Leased Equipment and involving (i) any death, personal injury, property damage or other loss or harm to any Person or property, (ii) any environmental controls, noise and pollution regulation, and any discharge, spillage, release or escape of any toxic or hazardous substance into the environment or any other damage to the environment including, without limitation, clean up costs, response costs of corrective actions and natural resource damages and any of the commodities, items or materials from time to time contained in or carried in any Unit, or (iii) any allegation based on strict liability in tort; or
- (f) any act or omission (whether negligent or otherwise) or any breach of or failure to perform or observe, or any other non-compliance with, any covenant, condition or agreement to be performed by, or other obligation of, Lessee under this Lease or any Operative Agreement to which it is a party or the falsity of any representation or warranty of Lessee in the Lease or in any document or certificate delivered in connection therewith;

but excluding for the purposes of this Section 26, any claim, demand or liability:

- (a) imposed on or against an Indemnatee to the extent that the same (1) is caused by the gross negligence or willful misconduct of such Indemnatee (other than gross negligence or willful misconduct imputed to such Indemnatee by reason of the gross negligence or willful misconduct of Lessee, including the gross negligence or willful misconduct of Lessee's directors, officers, Affiliates, servants, successors and permitted assigns), (2) is caused by any misrepresentation or inaccuracy or breach of a representation, warranty, covenant or any undertaking of such Indemnatee contained in the Lease or other Operative Agreement, (3) results from the exercise by such Indemnatee of its right under the Lease to inspect the Leased Equipment in a manner constituting gross negligence or willful misconduct, (4) relates to Taxes of such Indemnatee whether or not expressly assumed or undertaken by Lessee hereunder, except to the extent necessary to make payment on an After-Tax Basis;
- (b) as to Lessor, resulting solely from (1) a Lessor's Lien or (2) a voluntary transfer or other voluntary disposition of any Unit or any interest of Lessor therein not made pursuant to Section 25 unless, (I) such transfer or disposition occurs during the continuance of an Event of Default, (II) such transfer or disposition relates to a transfer to Lessee, or such other person as Lessee shall direct, of such Unit or (III) such transfer or disposition relates to a transfer pursuant to Lessee's election to terminate the Lease with respect to such Unit pursuant to Section 4.2 or Section 11 of the Lease;
- (c) that is to be borne by such Indemnatee pursuant to the express provisions of this Lease; or
- (d) arising from acts or events occurring after the later of (1) the expiration or earlier termination of the Lease with respect to a Unit and (2), if required pursuant thereto, the return of such Unit pursuant to the terms and provisions of the Lease, except to the extent such acts or events are attributable to Lessee, any Affiliate of Lessee or any sublessee or assignee.

26.2 Contest. Lessee shall give prompt written notice to the applicable Indemnatee of any claim or liability indemnified against under Section 26.1 of which Lessee has notice. Each Indemnatee shall give written notice to Lessee (i) promptly, but in any event within thirty (30) days, after such Indemnatee has notice thereof, of any claim or liability indemnified against under Section 26.1 and (ii) promptly of the commencement of any action, suit or proceeding against such Indemnatee for which indemnity may be sought under Section 26.1; provided, however, that failure to give such notice shall not affect Lessee's indemnity obligations hereunder except that Lessee shall not be responsible for any increase in any amount payable by Lessee that

would not have accrued if notice had been given in a timely fashion or to the extent the failure to give notice precludes Lessee from contesting a claim in a timely manner. Lessee may, at its expense, investigate and compromise any such action, suit or proceeding or participate in and, to the extent that such Indemnatee requires or that Lessee wishes, assume in good faith in a commercially reasonable manner and at Lessee's expense, and with counsel satisfactory to such Indemnatee, the defense of any such action, suit or proceeding; provided, however, that Lessee shall not admit liability on such Indemnatee's part or settle such action without the consent of such Indemnatee, which consent shall not be unreasonably withheld. If Lessee assumes the defense of such action, suit or proceeding, such Indemnatee may participate in such defense at such Indemnatee's expense in respect of any such proceeding as to which Lessee has acknowledged in writing its obligation to the Indemnatee pursuant to Section 26.1, and at the expense of Lessee in respect of any such proceeding as to which Lessee has not so acknowledged its obligation to the Indemnatee pursuant to Section 26.1, if it is held that Lessee has such obligation. Notwithstanding the foregoing, if (A) the written advice of independent counsel to such Indemnatee is that an actual or potential conflict of interest exists and that it is advisable for such Indemnatee to be represented by separate counsel, (B) in the reasonable opinion of such Indemnatee such action, suit or proceeding involves the potential imposition of criminal or material civil liability on such Indemnatee, (C) such proceedings could involve a material risk of the sale, forfeiture or loss of the Leased Equipment or any Unit, and such Indemnatee informs Lessee that such Indemnatee desires to be represented by separate counsel, or (D) a Default or an Event of Default has occurred and is continuing, such Indemnatee shall have the right to control its own defense of such claim and the liabilities arising in connection therewith (including the fees and expenses of such Indemnatee's counsel) shall be borne by Lessee. Nothing contained in Section 26.1 shall be deemed to require an Indemnatee to contest any claim or to assume responsibility for or control of any judicial proceeding with respect thereto. With respect to any amount which Lessee is requested by an Indemnatee to pay by reason of this Section 26.1, such Indemnatee shall, if requested by Lessee and prior to any payment, submit such additional information to Lessee as Lessee may reasonably request to substantiate the requested payment. Subject to the conditions set forth above, Lessee or its insurers shall have the right to investigate or defend or compromise any claim for which indemnification is sought pursuant to Section 26.1, and each Indemnatee shall cooperate at Lessee's expense with Lessee or its insurers with respect thereto. Each Indemnatee agrees that if an event, condition or circumstance exists, occurs or is anticipated to occur that could reasonably be expected to result in a claim for indemnification hereunder, such Indemnatee will use reasonable efforts, at Lessee's expense, to comply with any reasonable proposal by Lessee the effect of which is intended either to eliminate the need to make such claim or to mitigate such indemnity, or both; provided, however, that nothing contained in this sentence shall require any Indemnatee to pay money or suffer any loss or shall increase the obligations of such Indemnatee under the Lease or to take any other actions adverse to the interests of such Indemnatee in its sole judgment.

26.3 Subrogation and Reimbursement. Upon the payment in full by Lessee of any indemnity provided for in Section 26.1, Lessee shall be, to the extent permitted by law, subrogated to any right of the applicable Indemnatee, other than with respect to any insurance policies purchased by such Indemnatee. If an Indemnatee receives any refund, reimbursement or other payment in whole or in part, with respect to any liability fully paid or reimbursed by Lessee under Section 26.1, such Indemnatee shall promptly pay over to Lessee the amount so received up to the amount Lessee or any of its insurers has paid in respect of such liability.

27. Tax Indemnity

27.1 Generally

- (a) **Indemnified Taxes.** Lessee shall indemnify and hold harmless on an After-Tax Basis the Lessor from and against, and reimburse Lessor for, each Tax that is described in Section 27.1(b) and that is not excluded by Section 27.1(c) (such indemnified Tax herein referred to as an "Indemnified Tax").
- (b) **Included Taxes.** The Taxes for which Lessee must indemnify Lessor under Section 27.1(a) are, except as excluded by Section 27.1(c), any and all Taxes, whether imposed upon or asserted against Lessor, or the Leased Equipment, or any Unit or part or portion thereof or interest therein or otherwise by any federal, provincial or local government or other taxing authority in Canada, or by any foreign government or any political subdivision or taxing authority thereof, or by any international taxing authority which are:
 - (i) Taxes which would become payable by Lessor by reason of any breach of Lessee's representations, warranties or covenants hereunder;
 - (ii) Taxes payable by Lessor which arise solely as a result of the exercise by Lessee of its right to replace, substitute, modify or improve the Units pursuant to Section 8 hereunder;
 - (iii) Transfer Taxes relating to the sale of the Units to Lessor, the leasing of the Units to Lessee, the use and operation of the Units by Lessee and the transfer of title to the Units to Lessee on exercise by Lessee of any purchase option hereunder;
- (c) **Excluded Taxes.** The Taxes described in Section 27.1(b) for which Lessee is not required to provide indemnification under Section 27.1(a) are the following:

- (i) any Taxes imposed on Lessor resulting from the failure of this Lease to constitute a "true lease" or the failure of Lessor to be considered the owner of the Leased Equipment for Canadian tax purposes except if such failure arises solely as a result of Lessee's breach of any representation, warranty or covenant herein or under any other Operative Agreement to which Lessee is a party;
- (ii) any Taxes imposed on Lessor resulting from the gross negligence or willful misconduct of Lessor;
- (iii) any Taxes imposed with respect to events occurring after the later of (i) the return of possession of all of the Leased Equipment to Lessor if required pursuant to the terms of the Lease or (ii) the expiration or earlier termination of the Term and the payment of all Basic Rent hereunder; provided, however, that this exclusion (iv) shall not apply to Taxes relating to events occurring prior to or simultaneously with such return of possession or, if no such return is made, the expiration or earlier termination of the term hereof and payment of all Basic Rent due hereunder;
- (iv) the amount of any Taxes imposed on Lessor to the extent such Taxes would not have been imposed but for the failure of Lessor to file timely and properly any return or any form, certificate or other document which would have entitled Lessor to an exemption from, or a reduction in, a Tax indemnified under this Section 27.1, or other tax benefit with respect to such Tax to the extent such benefit, had it been available, would have been taken into account in determining any indemnity payable under this Section 27.1, provided that (A) Lessee shall have performed all of its duties and responsibilities pursuant to this Section 27.1, (B) Lessee shall have provided reasonable notice of the requirement of filing such return, form, certificate or other document and (C) Lessor shall have determined in good faith that such filing is permitted under all Applicable Laws and will not result in any adverse consequences to it or any Affiliate of it;
- (v) any Taxes to the extent such Taxes relate solely to the activities or status of Lessor in such jurisdiction unrelated to the transactions contemplated by the Lease and would have been imposed by such jurisdiction without regard to the transactions contemplated by the Lease;
- (vi) any Taxes that would not have been imposed but for a Lessor's Lien; and

- (vii) any Taxes imposed upon any transferee of Lessor (i) if such Tax would not have been imposed on the original Lessor, or (ii) to the extent such Tax exceeds the amount of Tax that would have been imposed on the original Lessor.

27.2 Payment of Taxes, Indemnity Amounts and Refunds

- (a) **Tax Filings and Payments.** Lessee shall cause all reports and returns that are required to be made with respect to Indemnified Taxes to be timely prepared and filed. Lessee shall make timely payment thereof directly to the appropriate taxing authority. Lessor shall furnish Lessee, promptly after receipt, copies of all requests for information from any taxing authorities relating to any Indemnified Taxes and shall request such taxing authority to contact Lessee regarding any such information provided that a failure of Lessor to comply with this sentence shall not affect its right to indemnification from Lessee for such Taxes. Lessee shall provide such information as may be reasonably requested by Lessor to enable it to satisfy its tax filing, audit, contest and other requirements.
- (b) **Date of Indemnity Payment.** Except as provided in Section 27.2(a) above (dealing with Indemnified Taxes paid in connection with a return or report to be prepared and filed by or on behalf of Lessee), each amount payable to Lessor pursuant to this Section 27 in respect of Indemnified Taxes (an "Indemnity Payment") shall be paid within thirty (30) days after written notice by Lessor to Lessee accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable; provided that such amount need not be paid prior to the later of (i) the third business day prior to the date on which such Taxes are due and (ii) where such Taxes must be paid in order to contest same, the date such Tax is required to be paid, and (iii) in the case of Taxes which are being contested pursuant to Section 27.3, thirty (30) days after the time such contest (including all appeals) is finally resolved, unless such Taxes have been paid pursuant to (ii) above.
- (c) **Subsequent Refunds.** If Lessor shall obtain a refund (including without limitation the offset of a refund against a further tax liability) of all or any part of any Tax paid by Lessee, Lessor shall pay Lessee an amount equal to the sum of (i) the amount of such refund (A) reduced by reasonable expenses not previously reimbursed and Taxes payable with respect to receipt thereof but (B) increased by the amount of any tax benefit realized by Lessor in connection with such payment to Lessee, and (ii) any amounts payable under Section 27.2(d) (relating to interest); provided, however, that notwithstanding the foregoing portion of this sentence, Lessor shall not be obligated to make any payment to Lessee pursuant to this sentence (i) in excess of the amount

paid by the Lessee with respect to such Tax and (ii) as long as an Event of Default has occurred and is continuing under the Lease.

Any subsequent loss of such refund or tax benefit shall be treated as a Tax subject to indemnification under the provisions of this Section 27 (in the case of any such tax benefit, without regard to the exclusions in Section 27.1(c)).

- (d) **Interest.** If Lessor receives a refund (including without limitation the offset of refund against further tax liability) of all or part of any Indemnified Taxes for which an Indemnity Payment was made by Lessee pursuant to this Section 27, Lessor shall pay promptly to Lessee any interest actually received from or credited by the taxing authority with respect thereto, computed after taking into account any taxes payable by Lessor as a result of the receipt or accrual of such interest, and increased by any taxes saved by reason of the deductibility of the payment or accrual by Lessor of the amount payable to Lessee hereunder or of the Taxes described in this Section 27.2(d). Any subsequent loss of such interest or tax savings shall be treated as a Tax subject to indemnification hereunder, without regard to the exclusions in Section 27.1(c) (other than the exclusion set forth in Section 27.1(c)(iii)).
- (e) **Contest.** If any written claim is made against Lessor for Taxes with respect to which Lessee may be liable for indemnity hereunder, Lessor shall give Lessee prompt notice in writing of such claim (and in any event within thirty (30) days after its receipt) and shall promptly furnish Lessee with copies of the claim and all other writings received from the taxing authority relating to the claim; provided, however, that (a) Lessor shall not be required to disclose any information relating to Taxes not indemnified hereunder and (b) the failure of Lessor to timely provide such written notice shall not affect Lessee's obligations under Section 27 except to the extent that Lessee's rights hereunder are precluded as a result of such failure. Lessor shall not pay such claim prior to the thirty (30) days after providing Lessee with such written notice, unless required to do so by law or unless deferral of payment would have adverse consequences which are not *de minimus* to Lessor. Lessor shall in good faith, with due diligence and at Lessee's expense, if requested in writing by Lessee, either (i) itself contest (including pursuing all appeals permitted hereby) in the name of Lessor (or, if requested by Lessee and permissible as a matter of law, in the name of Lessee or an Affiliate) the validity, applicability or amount of such Taxes, or (ii) shall, if requested by Lessee and permissible as a matter of law, permit or, at Lessor's election, require Lessee to contest in either the name of Lessee or an Affiliate or, with Lessor's consent (not to be unreasonably withheld), in the name of Lessor, the validity, applicability or amount of such Taxes, by:

- (i) resisting payment thereof if practical and not required by Applicable Law in order to contest such Taxes or otherwise;
- (ii) not paying the same except under protest if protest is necessary and proper;
- (iii) if the payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings; or
- (iv) taking such other reasonable action as is reasonably requested by Lessee from time to time;

provided, however, that if the contest is carried on in the name of Lessee or an Affiliate, or may be brought by Lessee in the name of Lessor, such contest shall be undertaken by Lessee, at Lessee's expense and at no after-tax cost to Lessor, unless at any time Lessor determines that either (1) such claim is not severable from other Taxes in dispute before the same taxing authority without adversely affecting Lessor with respect to such other Taxes or the resolution of the dispute or (2) based upon Lessee's conduct of such contest, Lessee's continued control of such contest could have an adverse impact on Lessor. In no event shall any Lessor be required or Lessee be permitted to contest any Taxes for which Lessee is obligated to indemnify pursuant to this Section 27 unless: (i) Lessor has received the opinion of independent tax counsel selected by Lessor and reasonably satisfactory to Lessee furnished at Lessee's sole expense, to the effect that a reasonable basis exists for contesting such claim or, in the event of an appeal, that there is a substantial possibility (though not necessarily that it is more likely than not) that a court will reverse or substantially modify the adverse determination (and provided, further, that no appeal shall be required to the Supreme Court of Canada); (ii) Lessee has agreed to pay Lessor on demand (and at no after-tax cost to Lessor) all reasonable costs and expenses that Lessor actually incurs in connection with contesting such claim (including, without limitation, all costs, expenses, reasonable legal and accounting fees, disbursements, penalties, interest and additions to the Taxes); (iii) no payment Default or Event of Default has occurred and shall have been continuing; (iv) Lessor has determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except if such Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of Lessor in a manner reasonably satisfactory to Lessor) on the Leased Equipment or any portion thereof or any interest therein; (v) the amount of such claims alone, or, if the subject matter thereof is of a continuing or recurring nature, when aggregated with identical potential claims with respect to this transaction shall be at least \$50,000; (vi) if such contest is conducted in a manner requiring the payment of the claim, Lessee shall have paid the amount required (and at no

after-tax costs to Lessor); (vii) such claim or liability does not involve the possibility of criminal sanctions or liability to Lessee; and (viii) Lessee shall have acknowledged and agreed in writing that if the contest is not successful, Lessee is obligated to indemnify fully Lessor; provided, however, that Lessee shall not be bound by such acknowledgement of liability if a final resolution clearly states conclusions of fact or law that establish that Lessee is not liable under this Lease with respect to such claim. Lessee shall cooperate with Lessor with respect to any contest controlled and conducted by Lessor and Lessor shall consult with Lessee regarding the conduct of such contest, provided that Lessor shall retain complete control of, and make all decisions relating to, such contest. Lessor shall cooperate with Lessee with respect to any contest controlled and conducted by Lessee and Lessee shall consult with Lessor regarding the conduct of such contest.

Lessor will not enter into any settlement or compromise with respect to any Tax that Lessor is required, pursuant to this Section 27.2, to contest without Lessee's prior written approval unless Lessor waives its right to indemnification with respect to such Tax. In the event and to the extent Lessor (x) effects a settlement or compromise of any such contest or otherwise terminates any such contest without such prior written consent of Lessee or (y) waives its right to indemnification hereunder with respect to the issues raised in such contest, Lessor (1) shall have no right to indemnity under this Section 27 with respect to such Tax (and any related claim made by a taxing authority with respect to other taxable years the resolution of which is based on the resolution of such claim or such related claim or the contest of which is materially prejudiced by the resolution of such proposed adjustment) and (2) shall pay to Lessee any amount previously paid or advanced by Lessee pursuant to this Section 27.2 with respect to such Tax (or such other claim).

If in the course of a contest the appropriate taxing authority shall advise Lessor that it is willing to agree to a settlement of such claim, Lessor shall notify Lessee of such settlement proposal. In addition, if in the course of a contest Lessee believes that the appropriate taxing authority might compromise a proposed adjustment, Lessee shall advise Lessor of the terms of the settlement proposal that Lessee is then willing to make, and upon receipt of such notice, Lessor will explore such settlement proposal with the appropriate taxing authority. If, in either case, a settlement proposal relates solely to Taxes for which Lessee is liable hereunder and is acceptable to both Lessee and the taxing authority, Lessor shall agree to the settlement proposal; provided, however, that Lessor shall not be obligated to formally propose or agree to a settlement if Lessor agrees that the amount of any Taxes in respect of such proposed claim and all future related claims that Lessee shall be required to indemnify against to Lessor shall not exceed the amount of such Taxes which would have been required if the settlement proposal had been

made and accepted and the underlying basis of such proposal applied to all future claims of the same nature.

- 27.3 Reimbursements by Lessor Generally.** If, for any reason, Lessee is required to make any payments with respect to any Taxes imposed on Lessor in respect of the transaction contemplated by the Lease or the Leased Equipment which Taxes are not the responsibility of Lessee under this Section 27, then Lessor shall pay to Lessee an amount that equals the amount paid by Lessee with respect to such Taxes.
- 27.4 Verification.** All computations required to be made under Section 27 shall be made in the first instance by Lessor, and the results of such computations shall be delivered to Lessee in writing. At the request and expense of Lessee, the accuracy of such computations shall be verified by the independent accountants selected by the Lessor and reasonably satisfactory to Lessee. Lessor agrees to cooperate fully with said accounting firm, and further agrees to provide it with any material such firm believes is reasonably necessary in order to ensure the accuracy of the computations provided that Lessor shall not be required to disclose any information it considers confidential unless such accounting firm shall have agreed to keep any such information confidential. Such accounting firm shall be requested to make its determination by the date on which the payment of any such amount must be made by Lessee to Lessor. The assumptions and method of analysis revealed or made available to such independent public accounting firm or other Persons shall be kept confidential and shall not be revealed by them to any Person.
- 27.5 Cooperation.** Lessor shall cooperate with and consider in good faith any reasonable request by Lessee upon the written request and at the expense of Lessee, in order to avoid or minimize any Taxes for which Lessor is entitled to indemnification under Section 27.1; provided, however, that in no event shall Lessor be required to take any action that it determines could result in any adverse consequences to it or any of its Affiliates.

28. Expenses

- 28.1 Obligation to Pay Expenses.** Lessee shall pay, as Supplemental Rent under the Lease, any periodic or other fees, costs or expenses of Lessor incurred in connection with the transactions contemplated by the Lease, including but not limited to: (i) the reasonable fees and expenses of Lessor and Indenture Trustee and the Noteholders (including reasonable legal fees and expenses) incurred in connection with (A) any supplements, amendments, modifications or alterations of the Lease consented to by Lessee or required by this Lease and all recording and filing fees, stamp taxes and other recording or filing taxes incurred in connection therewith or (B) the enforcement of the Lease against Lessee; and (ii) the ongoing fees and expenses (including reasonable legal fees and expenses) and of the Indenture Trustee under the

Indenture. Lessee shall have no liability for payment of any fees or expenses relating to any voluntary transfer of Lessor's interest in the Leased Equipment or the Lease.

29. General Provisions

- 29.1 Governing Law.** This Lease, as extended, amended, modified, renewed or supplemented, shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable herein.
- 29.2 Submission to Jurisdictions.** Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Alberta.
- 29.3 Severability.** Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Lease.
- 29.4 Successors and Assigns.** This Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns.
- 29.5 Amendments and Waivers.** No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto and, so long as the Indenture is in force, without the written consent of the Indenture Trustee as authorized by the Noteholders pursuant to the Indenture; provided, however, any breach or default, once waived in writing, shall not be deemed continuing for any purpose of the Operative Agreements.
- 29.6 Entire Lease.** This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements, term sheets, negotiations and understandings. No other lease agreement, oral or written, express or implied, has been made between the parties.
- 29.7 Payments on Business Day.** Notwithstanding any provision hereof to the contrary, any payment required under this Lease which is due on a day which is not a Business Day may be paid, without any interest charge for such delay, on the next day which is a Business Day.

29.8 Execution in Counterparts. This Lease will be simultaneously executed in counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes and all of which taken together shall constitute the same agreement. Each party may execute this Lease by facsimile transmission provided that such party shall deliver to the other party an originally executed version as soon as practicable thereafter.

30. Conditions Precedent to Closing

30.1 Lessee's Conditions Precedent. The obligation of the Lessee to complete the transaction under this Lease shall be subject to the satisfaction of, or compliance with, at or before the Closing Date, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Lessee and may be waived by it in whole or in part):

- (a) as of the Closing Date, there exists no Lessor Default or Event of Default;
- (b) the representations and warranties contained in Sections 24 are true and correct as of the Closing Date;
- (c) the Lessee has received, in form satisfactory to the Lessee, the following:
 - (i) a duly executed copy of this Lease and other Operative Agreements and the Confidentiality Agreement;
 - (ii) a certificate of status of the Lessor issued under the laws of its jurisdiction of incorporation;
 - (iii) a certified copy of the certificate and articles of incorporation and by-laws of the Lessor certified as of the Closing Date;
 - (iv) a certificate of the Lessor dated as of the date of this Lease setting forth specimen signatures of the individuals who will be executing the Lease and other Operative Agreements and the Confidentiality Agreement;
 - (v) an opinion of Lessor's Counsel, Lessor's in-house counsel and Stewart, McKelvey, Stirling & Scales, Lessor's Nova Scotia counsel addressed to the Lessee and to its counsel with respect to the transactions provided for herein, in form and substance satisfactory to the Lessee, acting reasonably.

30.2 Lessor's Conditions Precedent. The obligation of the Lessor to complete the transaction under this Lease shall be subject to the satisfaction of, or compliance with, at or before the Closing Date, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Lessor and may be waived by it in whole or in part):

- (a) as of the Closing Date, there exists no Default or Event of Default;
- (b) the representations and warranties contained in Section 23 are true and correct as of the Closing Date;
- (c) the Lessor has received, in form satisfactory to the Lessor, the following:
 - (i) a duly executed copy of this Lease and other Operative Agreements and the Confidentiality Agreement;
 - (ii) a certificate of status of the Lessee issued under the laws of its jurisdiction of incorporation;
 - (iii) a certified copy of the certificate and articles of amalgamation and by-laws of the Lessee certified as of the Closing Date;
 - (iv) a certificate of the Lessee dated as of the date of this Lease setting forth specimen signatures of the individuals who will be executing the Lease and other Operative Agreements to which Lessee is a party and the Confidentiality Agreement;
 - (v) opinions of Lessee's Counsel and/or Lessee's in-house counsel addressed to the Lessor and to its counsel with respect to the transactions provided for herein, in form and substance satisfactory to the Lessor, acting reasonably;
 - (vi) evidence of compliance with those filing requirements set forth in Section 10.2;
 - (vii) certified copies of original invoices with respect to the Units from the Manufacturer.
- (d) receipt of an Appraisal reasonably satisfactory in form and substance to Lessor;
- (e) receipt by Lessor of a favourable tax opinion from its tax counsel;

- (f) satisfactory inspection of the Units by Lessor:
 - (i) at Lessor's own expense;
 - (ii) in compliance with Lessee's safety standards; and
 - (iii) conducted at least one (1) week before Closing.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the date first above written.

LESSOR:

**GE CAPITAL RAILCAR
SERVICES CANADA COMPANY**

By: _____
Name:
Title:

By: _____
Name:
Title:

LESSEE:

NOVA CHEMICALS LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the date first above written.

LESSOR:

**GE CAPITAL RAILCAR
SERVICES CANADA COMPANY**

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

LESSEE:

NOVA CHEMICALS LTD.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

SCHEDULE A

RAILCAR LEASE AGREEMENT

BASIC RENT

SCHEDULE B

RAILCAR LEASE AGREEMENT
TERMINATION VALUES

SCHEDULE C

RAILCAR LEASE AGREEMENT
PRICING ASSUMPTIONS

SCHEDULE D

**RAILCAR LEASE AGREEMENT
STIPULATED LOSS VALUES**

SCHEDULE E

**RAILCAR LEASE AGREEMENT
CERTIFICATE OF DELIVERY AND ACCEPTANCE**

NOVA CHEMICALS LTD. (Lessee under that certain Railcar Lease Agreement ("Lease") dated as of December 8, 1998, between Lessee and GE Capital Railcar Services Canada Company ("Lessor")), hereby acknowledges and accepts delivery of the following equipment ("Leased Equipment"):

DATE ACCEPTED: December 8th, 1998

NUMBER OF UNITS: 300

MARKED AND NUMBERED: NCLX 1 through to and including NCLX 300.

Lessor hereby leases to Lessee, and Lessee hereby accepts and leases from Lessor, the Leased Equipment pursuant to the Lease.

Dated: December 8th, 1998

NOVA CHEMICALS LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE F

RAILCAR LEASE AGREEMENT
FORM OF
LEASE SUPPLEMENT

Between

GE Capital Railcar Services Canada Company as Lessor and NOVA
Chemicals Inc., as Lessee

**RAILCAR LEASE AGREEMENT
LEASE SUPPLEMENT**

This LEASE SUPPLEMENT dated as of _____, 199• between GE CAPITAL RAILCAR SERVICES CANADA COMPANY ("Lessor"), and NOVA CHEMICALS LTD. ("Lessee"),

WITNESSETH:

WHEREAS, the Lessor and the Lessee have heretofore entered into that certain Railcar Lease Agreement dated as December 8, 1998 (the "Lease"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in the Lease;

WHEREAS, the Lease provides for the execution and delivery of a Lease Supplement substantially in the form hereof for the purpose of confirming the acceptance and lease of the Units under the Lease in accordance with the terms thereof;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, the Lessor and the Lessee hereby agree as follows:

- 1 The Lessee hereby acknowledges and confirms that it has inspected and approved the Units set forth on Schedule I hereto and, as between Lessor and Lessee, such Units comply in all material respects with the specifications for such Units and are in good working order.
- 2 The Lessor hereby confirms delivery and lease to the Lessee, and the Lessee hereby confirms acceptance and lease from Lessor, under the Lease as hereby supplemented, of the Units listed on Schedule I hereto.
- 3 The Lessee hereby represents and warrants that no Casualty Occurrence has occurred with respect to the Units set forth on Schedule I hereto as of the date hereof.
- 4 The Closing Date of the Units described above is the date of this Lease Supplement set forth in the opening paragraph hereof
- 5 The aggregate Equipment Cost of the Units leased hereunder and the amounts comprising such Equipment Cost are set forth on Schedule I hereto. The Stipulated Loss Values and Termination Values applicable to the Units are set forth in Schedules B and D to the Lease.
- 6 Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement, to pay Rent to Lessor for each Unit leased hereunder as provided for in the Lease.

- 7 The execution and delivery of this Lease Supplement will in no way relieve or decrease the responsibility of any manufacturer for the warranties it has made with respect to any Unit.
- 8 Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Lease Supplement may refer to the "Railcar Lease Agreement dated as of December 8th, 1998", or may identify the Lease in any other respect without making specific reference to this Lease Supplement, but nevertheless all such references shall be deemed to include this Lease Supplement, unless the context otherwise requires.
- 9 This Lease Supplement shall be construed in connection with and as part of the Lease, and all terms, conditions and covenants contained in the Lease, as supplemented by this Lease Supplement, shall be and remain in full force and effect.
- 10 This Lease Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.
- 11 This Lease Supplement shall in all respect be governed by and construed in accordance with the laws of the Province of Alberta and laws of Canada applicable thereto.

IN WITNESS WHEREOF, the parties have duly executed this Lease Supplement as of the date first above written.

LESSOR:

**GE CAPITAL RAILCAR SERVICES CANADA
COMPANY**

By: _____
Name:
Title:

By: _____
Name:
Title:

LESSEE:

NOVA CHEMICALS LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

DESCRIPTION OF EQUIPMENT

| Number of Units | Size and Type of Equipment | Manufacturer | Reporting Marks | Lessor's Cost Per Unit |
|-----------------|--------------------------------|-------------------|---------------------|------------------------|
| 300 | 6245 cubic foot covered hopper | National Steelcar | NCLX-1 to 300 incl. | \$87,000 |
| | | | | |

SCHEDULE G

**RAILCAR LEASE AGREEMENT
NOTICE OF TRANSFER**

TO: NOVA CHEMICALS LTD.

FROM: GE Capital Railcar Serviced Canada Company
[Assignee]

This Notice of Transfer is delivered to you pursuant to Section 25.4(c) of a Railcar Lease (the "Lease") made as of the 8th day of December, 1998, between NOVA Chemicals Ltd., (the "Lessee") and General Electric Capital Railcar Services Canada Company (the "Lessor"). All capitalized terms used in this Notice of Transfer have the meanings given to them in the Lease. All section references in this Notice of Transfer are to sections of the Lease.

TAKE NOTICE that effective as of _____, 1998, the Lessor (the "Assignor") shall assign to [Assignee] (the "Assignee") to the extent of Cdn. \$ _____] and a proportionate share of the Assignor's rights and obligations under the Lease and all other Operative Agreements.

The Transferee below acknowledges that the within transfer is made subject to the terms and conditions of the Lease.

DATED the _____ day of _____, 199•.

[TRANSFEREE]

**GE CAPITAL RAILCAR SERVICES
CANADA COMPANY**

By: _____
(Authorized Officer)

By: _____
(Authorized Officer)

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE H
CONFIDENTIALITY AGREEMENT

District of Columbia)
)
City of Washington) ss:

I, KIM L. BARTMAN, Notary for the District of Columbia, hereby certify that the attached "Railcar Lease Agreement", dated December 8, 1998 between GE CAPITAL RAILCAR SERVICES CANADA COMPANY, Lessor, and NOVA CHEMICALS LTD, Lessee, is a true and complete copy of the original thereof.

Certified this 8th day of December, 1998.


NOTARY PUBLIC

My commission expires: 3-31-2000